

Bushkill Township Open Space Plan

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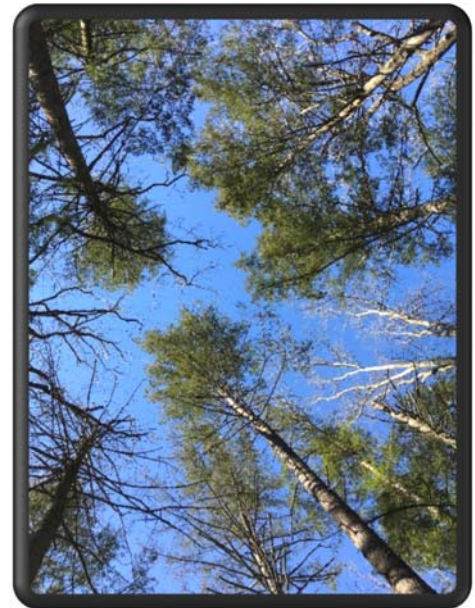
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Dedication

This plan is proudly dedicated to Dale Prinkey whose decades of leadership and vision profoundly influenced and improved the protection and preservation of our local natural, cultural, and historical resources. Aside from an impressive career as the Manager at Jacobsburg State Park and Environmental Education Center, Dale served on the Bushkill Township Environmental Advisory Council for 20 years, from 1988 through 2007. Dale also worked diligently for decades with the Jacobsburg Historical Society to preserve and restore our community's special historical resources.

Dale's service to our Township is greatly missed, but his many contributions will have forever improved our community and the quality of life it offers, both to residents and visitors.

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1.0 Community Background of Bushkill Township

Bushkill Township is located in northcentral Northampton County. Until formation on August 13, 1813, the land area of Bushkill Township was part of its parent municipality, Plainfield Township. Before that time, the area of Bushkill Township was often referred to as "The Plains."

1.1 Character and Geographic Location

On the north, the Township is bordered by the Blue Mountain and Monroe County, with the Appalachian Trail running all along the summit of Blue Mountain. Plainfield Township and the Borough of Wind Gap border in the northeast, with Plainfield Township extending along the east to the Borough of Stockertown at the southeastern corner. The lengthy western border is with Moore Township, and the shorter southern border is with Upper Nazareth Township, just north of the Borough of Nazareth.

The Township has an area of approximately 25.7 square miles (approximately 16,448 acres). The majority of the land in Bushkill Township can be classified as rural and agricultural with sizeable areas of woodland primarily lining stream valleys and along the slope of the Blue Mountain. As such, the Township has retained the atmosphere of a rural agricultural community.

The Township is drained almost entirely by the Bushkill Creek and its primary tributary, Sobers Run. The southwestern corner of the Township is in the Monocacy Creek watershed. The ridge, or dividing line, between these two watersheds generally follows Cherry Hill Road and High Street.

The Township is generally rural in character. This is undoubtedly due to the fact that there are three boroughs (Nazareth, Stockertown, and Wind Gap) in close proximity to the Township. These boroughs were traditionally the centers of urbanization amongst an otherwise agricultural landscape. More recently, residential growth has crept out from beyond the borough boundaries. As early as 1979, the Comprehensive Plan stated that "the development along Bushkill Center Road and Jacobsburg Road is part of the physical outward development" of Nazareth Borough. As of 2002, the existing land-use in Bushkill Township was as follows:

<u>Land-use Category</u>	<u>Acres</u>	<u>% Coverage</u>
Residential	4,614.8	28.0
Commercial	84.9	0.5
Industrial	79.4	0.5
Wholesale & Warehousing	72.9	0.5
Transportation, Comm. & Utilities	560.5	3.5
Public & Quasi-Public	68.2	0.4
Parks and Recreation	2,597.2	15.8
<u>Agricultural & Vacant</u>	<u>8,369.8</u>	<u>50.9</u>
TOTAL	16,447.7	100

According to the Lehigh Valley Planning Commission, the information from the June 2004 Existing Land-use Map for Bushkill Township tabulates as follows:

<u>Land-use Category</u>	<u>Acres</u>	<u>% Coverage</u>
Residential	3,896	24.6
Retail and Commercial	92	0.6
Office	12	0.1
Manufacturing & Industrial	44	0.3
Transportation & Commercial	83	0.5
Public & Quasi-Public	80	0.5

Parks and Recreation	2,530	16.0
<u>Agricultural & Vacant</u>	<u>9,106</u>	<u>57.5</u>
TOTAL	15,843*	100

* This is 604.7 acres less than the 2002 total. Streets were not calculated by LVPC in any category or in total acreage in the 2004 GIS data layer.

The primary linkage between Bushkill Township and the Lehigh Valley is via State Routes 33 and 512.

State Route 33, a four-lane expressway located along the eastern side of Bushkill Township, connects with U.S. Route 22 and the cities of Easton, Bethlehem and Allentown to the southeast and the resort area of the Poconos to the north. With a direct interchange to Interstate Route 78, State Route 33 has become a major artery in regional and interstate transportation, making the entire region a "bedroom community" for the Northern New Jersey and New York City metropolitan areas. More recently, the Lehigh Valley has been declared as a transportation hub by the federal government, leading to construction of transportation-related facilities such as large warehouses, fueling stations, and other support facilities.

State Route 512 traverses the Township in a northeast-southwest direction and connects the Township with U.S. Route 22 and the City of Bethlehem to the southwest and the resort area of the Poconos to the north. Via State Routes 33 and 512 the residents of Bushkill Township are approximately 20 minutes from the centers of the Cities of Bethlehem and Easton with easy access to the New York City metropolitan area.

Bushkill Township is located in what was traditionally referred to as the "Slate Belt." This region is a geographic, geological, and to some extent an economic band that traverses the Lehigh Valley at the toe of the Blue Mountain from the Delaware River to the western reaches of Lehigh County. It was within this "Belt" that slate was once extensively quarried.

1.2 Physical Setting

1.2.1 Geology

The highest elevation in the Township is Blue Mountain, rising to 1,560 feet above mean annual sea level. Blue Mountain is composed of Shawangunk conglomerate, a resistant rock that is less susceptible to erosional forces than the Martinsburg shale that underlies most of Bushkill Township.

The Martinsburg shale is divided into three members, Upper, Middle, and Lower, that are exposed in that order from north to south. The Upper Martinsburg shale erodes most readily of the three members, and it forms a belt of relatively flat land just south of Blue Mountain. The Upper Martinsburg shale belt is also the most economically important because it is within this belt that most of the slate quarrying in the County has taken place.

Proceeding south from Route 512, the terrain becomes hillier and is bisected by a number of streams. This is a result of the stronger metamorphism (intense heat and pressure) of the Middle and Lower Martinsburg shale. The metamorphic bedrock is resistant to erosion. Water erosion along the least resistant path produced the hills and stream valleys south of the Blue Mountain. There is also a very small intrusion of Jacobsburg limestone east of Cherry Hill and in the extreme southeastern corner of the Township where the lowest elevation (380 feet above mean annual sea level) is found.

During glacial times, the area was overridden by a series of ice sheets, at least one of which left a deposit of till (poorly sorted material) over the shale and slate bedrock. The till varies in thickness and distribution; soil has developed in this till blanket, which contains shale and slate fragments. The freezing-thawing action of the ice has also broken up the upper part of the bedrock (shale) developing a soil-bedrock mixture extending into the upper bedrock.

1.2.2 Soils

Soil characteristics in floodplains, high water table conditions, steep slopes, woodland areas, and soil permeability affect land-use in Bushkill Township.

Agricultural use of areas adjacent to streams or seasonal waterways subject to flooding is limited mainly to pasture because of excessive wetness and flooding which can destroy cultivated crops. Commonly, farmers attempted to alleviate these impediments to farming with the construction of artificial drainage systems, such as tile drains, to permit farming in most of these areas.

As recent experience has shown, development or construction in these areas should be avoided due to the potential for extensive property damage or injuries, as well as interference with the natural waterways and water recharge. In addition, floodplains have a shallow water table causing difficulties with on lot sewage treatment.

Floodplain areas are best preserved for open space, woodlands, recreational areas, or other uses that do not require substantial structures or uninterrupted activities.

High water table areas have soils that are saturated during most of the year to within eight inches of the surface. Agricultural use in these areas, like the floodplains, is primarily limited to pasture land unless tile drains or diversion ditches are used to artificially drain the area for planting cultivated crops.

Foundations, septic tanks and lawns all face potential problems if these areas are developed for residential or commercial use. Pennsylvania Department of Environmental Protection (DEP) regulations permit use of alternate on-lot sewage systems of these areas if certain criteria are found. Otherwise, areas would have to be serviced by public or community sewers if developed. Therefore, woodland, recreational land and open space uses are generally recommended for these areas to eliminate potential problems.

Seasonal high water in the form of ponding on an impermeable "pan" soil layer results in a perched water table. Soil mottling may indicate a fluctuating high water table.

These areas are suitable for cultivated crops. Excess water in the spring may delay planting because wet soils "warm-up" more slowly and impede the use of heavy farm equipment. Artificial drainage and erosion control practices can be used to alleviate these intermittent high water table problems.

Commercial and residential development of these areas should include precautionary measures, such as, raised or waterproofed basements, or restricted in-ground development of any type. As mentioned, DEP regulations permit use of alternate on-lot sewage systems under certain conditions. Woodland, low-impact recreational and open space uses again are suitable for these areas.

Slope is defined by the Soil Conservation Service (SCS) as the vertical change in feet per 100 feet of horizontal length and is expressed as a percentage. There are two classes of slopes, moderate

(between 8-15 percent) and severe (greater than 15 percent); that affect certain agricultural and other land-uses. Lesser slopes, if not too wet, are generally suitable for most land-uses and activities.

Moderate slopes can be used for cultivated crops with basic erosion control practices (contour strips, diversion terraces, cover crops or surface residues). Severe slopes, up to 25 percent can be used for cultivated crops only with very strict erosion controls. Slopes exceeding 25 percent should be left in their natural state.

There are numerous reasons for protecting steep slopes. First, steep slopes next to watercourses are very important to protect because of their potential, immediate harm to water quality and aquatic habitats if erosion occurs. Second, protection of steep slopes prevents flooding, landslides, and other problems due to slope instability. Finally, steep slopes provide "aesthetically pleasing open spaces" and foster local biodiversity for flora and fauna. For these reasons, many municipalities have steep slope protection ordinances.

Development of moderate and severe slope areas for residential use requires special adaptation for foundation construction, erosion control during construction and special lawn care practices. DEP regulations permit use of alternate on-lot sewage systems on slopes up to 25 percent. Areas with slopes greater than 25 percent would have to be served by public or community sewers. In areas where large lot development is permitted, a portion of the site will usually fall within reasonable slope guidelines for on-lot sewage systems.

Woodland, low-impact recreation, open space and limited controlled development are the best uses for slopes greater than 25 percent. Ground cover, especially native grasses, herbs, shrubs, and trees, should be established in open or recreational areas to prevent erosion.

Shallow depth to Bedrock areas may limit agricultural uses by limiting root depth of some crops or by interfering with farm, equipment and tilling. Few soils in the Township are naturally shallow: most of the shallow areas resulted from erosion of the top soil. Therefore, erosion control is important to proper use and planning of these areas. In areas of shallow depth to bedrock, alternatives to traditional on-lot septic systems may be required.

Soil permeability reflects the ability of water to move through the soil. Soil permeability affects agricultural uses if it is excessively rapid (too dry, or droughty), or excessively slow (too wet) to maintain the proper moisture levels. Traditionally, tile drains have been used to alleviate excess wetness. Deep-rooted crops, such as alfalfa, are best suited for droughty soils.

Soil permeability also influences septic tank absorption-field capabilities. A slowly permeable clay soil may cause ponding of water or surface sewage discharges. A rapidly permeable, sandy soil may permit passage of waste water through the surface soils before it is fully treated. Alternate on-lot sewage systems may be required to overcome these constraints.

1.2.3 Woodlands

Much of the area north of Route 512 on the southern edge of the Blue Mountain is woodlands. Significant woodlands in the lower portion of the Township are found in Jacobsburg State Park, along Bushkill Creek and its tributaries (including floodplains and associated wetlands), and on steep slopes.

Woodlands are vital, renewable natural resources that play an important role in watershed protection, aquatic habitat (streams, vernal ponds, etc.), air quality improvement, and erosion control. They also add to the aesthetic quality of the Township, provide an excellent wildlife

habitat (riparian and terrestrial), and increase the recreational potential of the area. The potential for commercial lumbering, if desired, may also exist in some areas.

Woodlands in environmentally sensitive areas (i.e., floodplains, steep slopes, vernal ponds, spring seeps, and wetlands) should be preserved to protect the natural functions and values of those areas. In those areas that are suitable for development, special consideration should be given to protecting as much of the woodlands as possible through use restrictions or design and construction limitations. Not only will this result in the benefits noted above, but will generally add to the attractiveness of the development, and therefore increase its value.

1.2.4 Hydrology

There are two major watersheds that drain Bushkill Township, those of the Bushkill and Monocacy Creeks. The Bushkill Creek and its tributaries (including Sobers Run, an exceptional value stream) constitute the largest watershed, draining the majority of the Township while a tributary to the East Branch Monocacy Creek only drains the extreme southwestern portion.

Both streams are well known locally for their excellent water quality, natural wild trout reproduction, and diversity of aquatic plants and insects that inhabit them. These attributes are all very susceptible to change since they are part of a fragile "high quality" and "exceptional value" stream ecosystem. From a resource protection standpoint, careful scrutiny should be given to any change that could, directly or indirectly, adversely affect stream quality.

One of the best methods of preventing most of the potentially adverse effects on stream quality is to protect the streams' headwater wetlands and spring seep areas, floodplains, and adjacent steep slopes. In addition to the direct impacts of development, the resulting runoff increases flood-flow and decreases baseflow, greatly damaging critical stream characteristics.

Consistent with the Nazareth Area Multi-Municipal Comprehensive Plan and Bushkill Township Official Map (2005), development or other environmental damage should not be encouraged in or around floodplains.

Protection can best be achieved by restricting use of these areas to low-impact recreation, open space and certain agricultural practices. Protection of natural drainage swales and headwater wetlands and spring seeps reduces potential stream flooding, erosion and sedimentation, and, at the same time, contributes to recharge of groundwater supplies.

Bedrock is the major factor in locating adequately producing wells. Both shale and slate have a low primary permeability allowing water to flow only through joint and fracture openings. Existing well data show that wells in the slate area usually have high yields if the well taps a joint or fracture where the water is concentrated, but a much lower yield and possibly at a greater depth if not. Well yield decreases from the north to the south in the Township but, is generally ample to supply a residential dwelling, traditional style farm, or limited use non-water dependent commercial/industrial use.

There are two potential problems that could affect groundwater supply. First, is the possible lowering of the water table around a concentration of wells where excessive pumping of water occurs. This creates a cone of depression that could cause shallower wells to dry-up and require deeper drilling to obtain water. Second, is potential contamination of the groundwater supply by improperly located or malfunctioning on-lot sewage disposal systems.

1.3 History and the Unique Aspects of the Bushkill Community

Early settlement of Bushkill Township began around 1742. The majority of the early settlers were German farmers. The original farmsteads consisted of log houses and crude livestock shelters. As the years passed, the settlers replaced their log houses with ones built of lumber or, as in most cases, of local limestone and sandstone. The original, small, livestock buildings were replaced with large Pennsylvania "bank barns."

The development pattern of Bushkill Township in about 1800 consisted primarily of small farms scattered throughout the Township and the two small hamlets of Jacobsburg and Cherry Hill. Of the two, Jacobsburg has been documented as being historically significant. On the south side of the Bushkill Creek was a gun factory which made arms for the fledgling United States. Jacobsburg developed into an agricultural service center with the establishment of the grist mill and a saw mill. Although this village, now nonexistent, never contained many settlers, in 1874, it had an inn, grist mill, saw mill, tannery, and school.

The outpost at Cherry Hill consisted of the "Rose Tavern" which was a trading post built by the Moravians in 1852. During times of Indian trouble, it was used as a refuge. The trading post carried on business with the Indians and settlers until 1872 at which time it was removed to Nazareth. As the early road pattern developed in the Township and the Lehigh Valley, this outpost found itself at the junction of two locally important roads. The road from the Moravian settlement of Nazareth split here with one leading to the "Wind Gap" and the other to the northern section of the Township.

Geographic location, development of a road system and the slate industry encouraged settlement in new villages of the Township.

The village of Clearfield, developed around an inn and blacksmith shop, is located approximately half-way between the slate communities of Chapman and Wind Gap. As such, this village served the needs of the early travelers of the slate region. By 1874 this village contained an inn, blacksmith shop, and school.

Bushkill Center, located at the intersection of two roads in the center of the Township, was readily accessible from a large part of the Township. As such, this village was an ideal location for a post office, church, inn, and saw mill, which it contained in 1874.

The village of Douglasville owed its development to the Douglas Slate Company. With the demise of the slate industry in the Lehigh Valley, this early company village also died. All that remains is an abandoned quarry now utilized as a reservoir and about four houses. Unlike many other communities in the "Slate Belt," the slate industry did not have the adverse effect on the landscape of Bushkill Township since there were few quarrying operations.

1.4 Governmental Background

Bushkill Township is classified as a Township of the Second Class by the Commonwealth of Pennsylvania. The local governing body consists of five elected members comprising the Board of Supervisors. Bushkill Township has an appointed Secretary-Treasurer/Township Manager to oversee administrative activities. The Township provides road service, police service, building and zoning inspections, park and recreation services, and administrative services to the community. The Township adopted a Comprehensive Plan in 1979, and approved the Nazareth Area Multi-Municipal Comprehensive Plan, which is a joint comprehensive planning effort involving seven (7) surrounding municipalities in Northampton County.

1.5 History of Municipal Park and Recreation Function

The Bushkill Township Park began with the purchase of 29.2 acres in October of 1984. From this original tract, 12 acres have been developed into nine ball fields, a youth playground area, an acre and half parking lot, and a pavilion which is available to the residents of the Township for picnics and outings. The seven-member Recreation Board meets monthly and is responsible for making recommendations to the Board of Supervisors on budgeting, maintenance, program development, recreational facilities, employment candidates, and employee supervision.

Historically, Bushkill Township's baseball and softball programs are administered by the Bushkill Township Athletic Association.

1.6 Demographics

The population increase in the period between 1970 and 2000 was 106.1%; meaning the population doubled in 30 years.

The estimated population as of July 1, 2003, was 7,464. The population was 5,982 according to the 2000 Census. The Township grew 26.7% between 1990 and 2000. Similarly, the number of housing units increased 27.8% from 1,883 houses in 1990 to 2,406 in 2000. In 2000, 96% of the houses were single-family detached structures.

As a whole, Northampton County was the sixth fastest growing county in Pennsylvania, according to the 2000 census.

1.7 Land-Use Patterns

The Blue Mountain area provides scenic vistas suitable for low density residential use. A large farming community still exists in the Township, and it is this group that is under the most pressure from land developers. Low density residential land-use makes up the balance of the Township's land mass.

The historical pattern of land-use dating back to the eighteenth century was rural, agricultural-based development. As with most farming communities, natural resources, especially soil quality, had a dramatic influence on land-use although the presence of other significant minerals also affected land-use. The other influences that impacted land-use include commercial and transportation activities.

The early establishment of nearby boroughs served to relieve the Township of population pressure until relatively recently.

The advent of railroad and trolley lines opened the countryside to many new inhabitants. Since this time, the Township has been part of the post-World War II suburbanization of the Lehigh Valley.

According to the Nazareth Area Multi-Municipal Comprehensive Plan, the biggest historical event in the Nazareth Area during the second half of the 20th century was the growth in rural, non-farm development. This development came in the form of residential subdivisions and scattered single family homes.

As recently as 1940, the number of persons living in the five boroughs in the Nazareth area exceeded the number of persons living in the five townships. Although the 1940s experienced an increase in population growth, the development of the townships did not really explode until

the 1950s. Between 1950 and 1960 the population of the five townships increased 22.1 percent. The rate of growth increased for the next two decades.

Commercial and industrial activities were traditionally associated with small villages. Either they were established in crossroad villages, or their very success encouraged growth of ancillary and compatible commercial uses which then led to the growth of villages. The Nazareth Area Multi-Municipal Comprehensive Plan indicates that in addition to farming, one of the earliest industries to take place outside of Nazareth was the making of firearms. The Village of Filetown in Bushkill Township got its name because of lock and gunsmiths whose tool was the file. In 1808, William Henry II built a forge at Jacobsburg for the manufacture of the bar iron for his guns. The Boulton Gun Works was built in 1812 and started operation a year later. Henry trade rifles that were made at the Boulton Gun Works accounted for over one-half of the trade guns used in the American West during the first half of the 1800s.

1.8 Existing Open Space and Park Land

The following list includes recreation and open space sites developed and maintained for public use within Bushkill Township:

State Game Lands No. 168	1,204	acres	State
Jacobsburg Environmental Education Center	1,168	acres	State
Charron Properties (now State Gamelands)	119	acres	State
Bushkill Township Recreation Center	78	acres	Municipal
Ballas Natural Area	90	acres	Municipal
Heintzelman Pond	8	acres	Municipal
Bushkill Township Trail	9	acres	Municipal
Mineo Parcel (at Township Public Works Facility)	21	acres	Municipal
Graver Arboretum	63	acres	Private
Wentzell Property*	50	acres	Private

**Limited public access for passive recreation such as hiking, walking, bird watching, nature study, wildlife viewing, fishing, and other conservation-related activities.*

1.8.1 State Owned Public Use Lands

Bushkill Township has two major collections of open space which are owned and managed by the State: The Pennsylvania State Game Lands along the Blue Mountain and Jacobsburg State Park/Environmental Education Center. As noted in the Two Areas Greenway Plan, Blue Mountain is an important regional, environmental component and is part of a larger greenway corridor protecting the approximately 2,150-mile Appalachian Trail from Georgia to Maine. Smaller open space areas open to the public include the Bushkill Township Recreation Center and Graver Arboretum.

The State Gamelands not only provide an extensive area for hunting and hiking amid forested lands, but protect the sensitive mountain ecosystem from direct and indirect impacts of development. SGL 168 is rugged Blue Mountain terrain, with elevation changes of 1,000 feet in some places. It is mostly mature timber, although the trees are not large, including considerable chestnut oak, sassafras and other drier, upland species. The lower elevation lands located immediately to the south of the State Gamelands are largely farmlands and residential areas.

The original land for Jacobsburg Environmental Education Center was purchased by the Department of Forests and Waters from the City of Easton in 1959. In 1969, additional land was purchased bringing the total land area of the Center to its present size of 1,168 acres. It contains

18.5 miles of trails and offers recreational opportunities such as hiking, biking, cross-county skiing, picnicking, fishing, and hunting.

Jacobsburg was dedicated as an environmental education center in October of 1985 and is one of only four environmental education centers operated statewide by the Pennsylvania Department of Conservation and Natural Resources (DCNR) - Bureau of State Parks.

Jacobsburg Environmental Education Center offers environmental education programs ranging from preschool environmental awareness programs to high school level environmental problem-solving programs, historical programs, teacher workshops and public interpretive programs. The Jacobsburg National Historic District, where the famous Henry Rifle was made, lies almost entirely within the Center/parklands. Henrys Woods, an old growth forest area found within the Historic District, offers very scenic hikes, plant observation, and other passive outdoor recreational activities.

1.8.2 Municipal Owned Park and Open Space Land

Bushkill Township owns and manages four significant public use areas within the Township, including the Bushkill Township Recreation Complex, Bushkill Township Trail, Ballas Natural Area, and Heintzelman Pond.

The Bushkill Township Recreation Complex consists of nearly 90 acres. The park consists of twelve ball fields, soccer fields, a multipurpose field, fishing pond, natural area with trails, and a pavilion donated by the Lions Club which is available to the residents for picnics and outings.

The Bushkill Township Trail is a 2-mile trail (9 acres) that currently connects Jacobsburg Environmental Education Center through preserved properties to Route 512, where a parking area exists. This trail is ultimately proposed to connect to the Appalachian Trail and to trails leading into Plainfield Township and Wind Gap Borough.

Ballas Natural area is a 90-acre tract that was purchased with grant money provided by the Pennsylvania Department of Conservation and Natural Resources, Northampton County Open Space Program, and the Bushkill Township Open Space Program. The site provides passive recreation and includes a 1-mile perimeter trail system, fishing pond, natural meadows, and an overlook area.

Heintzelman Pond is an 8-acre site in the southwestern corner of the Township which was purchased through the Township's Open Space Program. The site provides a walking trail, picnic tables, and a 2-acre pond for public use.

1.8.3 Privately Owned Park Land - Graver Arboretum

Dr. Lee and Virginia Graver created an environment conducive to growth for wildflowers, ferns, rhododendrons, and native and rare trees, including more than 150 species of conifers. The result is a beautiful 62.6-acre arboretum which the Gravers generously donated to Muhlenberg College in 1994. Although this is a private property, visitors are welcome to walk the trails.

1.8.4 Land Trusts

There are many land trusts in the region that preserve properties through various means, with the most common being conservation easements which are held by the land trust, and potentially co-held with other entities such as the County, municipalities, and other partners. In some cases, land trusts may purchase land as an intermediary, with planned resale or donation of the

property. Transfers are made in an approved manner that will preserve the conservation values for which the land was acquired by the land trust. It is common for land trusts to structure transfers to entities such as municipal, county, state, and federal government entities which may accept the properties for permanent protection and long-term management. In some cases, land may be annexed to existing public lands to enlarge public use areas, such as State Gamelands which allow public access for hunting, fishing, and other outdoor recreation.

The Charron Properties, which comprised 14 separate parcels for a total of 119 acres, mostly in Bushkill Township, with lesser area in Plainfield Township, were purchased fee simple by the Wildlands Conservancy and then transferred to the PA Game Commission where it was annexed to State Gamelands.

The 50-acre conservation easement on the Wentzell Property was purchased by Heritage Conservancy and will remain in place in perpetuity. The property remains in private ownership, with all but the land immediately surrounding the home and outbuildings, preserved as natural area. The easement area on the property is open to the public only for limited passive recreation such as hiking, walking, bird watching, nature study, wildlife viewing, fishing, and other conservation-related activities.

1.9 County and State Mechanisms That Support Land Preservation in Bushkill Township

1.9.1 Lands with Preferential Assessment

Numerous residents within the Township have registered their properties with the County under preferential assessment programs. These are voluntary covenants with owners who have valuable open space resources (e.g., farmland, forested areas, water resources) and wish to preserve open space. Consequently, enrolled properties are assessed by the County at the fair market value (or at less than highest yield use, based on zoning and development potential). As a result, the property owners are afforded significant savings through preferential property tax assessment as an incentive to maintain the land as open space.

There are two acts available to land owners for preferential assessments: Act 515 (Pennsylvania Open Space Covenant Act of 1966) and Act 319 (Pennsylvania Farmland & Forest Land Assessment Act of 1974). Of the two, Act 319 has more stringent requirements. Act 319, also known as the "Clean and Green Act," is available to landowners for the following uses: agricultural use, agricultural preserve, and forest preserve. Under this program, soil classification and yield per acre determine a property's individual assessment. Enrollment in this program is continuous unless dissolved by the landowner or eligibility requirements are not maintained.

Lands covenanted under Acts 319 and 515 are considered only temporarily protected since the enrolled property owners have the right to terminate the agreements at any time, noting with refund and penalty. Although imperfect, enrollment shows desire by landowners to maintain their properties as open space.

Based on current data from Northampton County (August 2017), there are 6,277.21 acres covenanted under Acts 319 and 515 within the Township; 5,240.65 and 1,036.56 acres, respectively.

1.9.2 Agricultural Security Areas

Similar to lands covenanted under the preferential assessment programs, enrollment into an Agricultural Security Area (ASA) suggests a significant commitment by property owners for ongoing farmland preservation. The ASA program was created by the Agricultural Security Area

Law (Act 43 of 1981) to protect the agricultural industry from increasing development pressure. ASAs are intended to promote more permanent and viable farming operations by strengthening the farmers' sense of security in their right to farm by protecting against potential conflicts with impinging land development (e.g., noise, odor, dust, etc. associated with farming activities). Enrollment into an ASA is a prerequisite for enrollment into farmland preservation (see Section 1.9.3 Agricultural Conservation Easements and Section 4.1 Farmland Preservation), but by itself ASA enrollment does not outright protect against or prevent development.

1.9.3 County Agricultural Conservation Easements

In 1993, Northampton County preserved its first farm under a statewide program to purchase agricultural conservation easements (also commonly referred to as "ag easements" or "the purchase of development rights" on farms). Farmers whose lands are included in an Agricultural Security Area are eligible to sell agricultural conservation easements on a voluntary basis to a county agricultural land preservation board. To date, four farms in Bushkill Township, totaling 277 acres, have been preserved through this program.

Kahler Farm	17	acres
Pardius Farm	117	acres
Kahler Farm	130	acres
Kahler Farm	12	acres

Additional information about the Farmland Preservation Program in Northampton County can be obtained through:

Northampton County Farmland Preservation Office
Gracedale Complex, Greystone Building
Nazareth, PA 18064-9211
Phone: (610) 746-1993 or Fax: (610) 746-1980

An Agricultural Easements and Agricultural Security Areas map is provided in Append B.

2.0 Potentially Vulnerable Open Space Resources

Potentially Vulnerable Resources are resources such as historic sites, undeveloped land (including land in an Agricultural Security Area), open space linkages along creeks and streams, flood plain areas, steep slopes and highly sensitive natural resources like wetlands, rock outcroppings, woodlands and prime agricultural land. Additional vulnerable resources are the vistas or views formed by the gently rolling land.

2.1 Historic and Cultural Resources

Jacobsburg Historic District located off Rt. 115, 3 miles Northeast of Nazareth is listed on the National Register of Historic Places

The Pennsylvania Historic and Museum Commission's Bureau of Historic Preservation database has no other sites declared eligible for listing in the National Register of Historic Places.

The Pennsylvania Historic and Museum Commission's Bureau of Historic Preservation database has information on eight other structures (bridges) and a single building for which no determination of eligibility for listing in the National Register of Historic Places has been made. The building is noted as the:

- Jones Farm, Fehr Road

The Heyer's Mill property was identified through the public participation process as a significant historic resource that was important to the community. While a number of people indicated that historic resources were important, there is no comprehensive listing of historic resources. The Township should consider compiling such a list and investigate strategies such as Historic Overlay Zoning and promoting historic designation of appropriate structures.

2.2 Scenic Resources

Blue Mountain is the most extensive relatively contiguous area of natural habitat in Northampton and Lehigh counties. It is also one of the major corridors for the movement of biota in eastern Pennsylvania. With its extensive forests, streams, seeps, vernal pools, rock outcrops, and boulder fields, Blue Mountain is probably the wildest area remaining in southeastern Pennsylvania. It has long been recognized as one of the major east coast fall flyways for migrating raptors.

2.3 Natural Features

2.3.1 Blue Mountain

The *Nazareth Area Multi-Municipal Comprehensive Plan* stated that Blue Mountain is recognized as the most extensive relatively contiguous area of natural habitat in Northampton County. Protection of the wooded, lower slopes of the Blue Mountain is important to several birds of continental concern that nest in this area. The lower slopes of the Blue Mountain also contain wetlands and soils with hydric components that are not suitable for home construction.

2.3.2 Jacobsburg State Park

The 1,168 acres of rolling terrain of Jacobsburg Environmental Education Center is near the foothills of the Pocono Plateau. The habitats range from fields in various stages of successional growth to mature hardwood forests dominated by oak trees. About 2.5 miles of the beautiful Bushkill Creek and its tributary, Sobers Run, wind through the center.

Jacobsburg's natural resources are not only an excellent outdoor laboratory for environmental education and interpretation, but are also important to many visitors from the surrounding area for healthy outdoor exercise and recreation. The natural open spaces provided by this public resource are becoming increasingly important in a continually expanding urban setting.

2.3.3 Moorestown Wetlands

This large conglomeration of wetlands includes areas of marsh and shrub swamp, which are fed by ground water seepage. Red maple (*Acer rubrum*), cattail (*Typha latifolia*), skunk cabbage (*Symplocarpus foetidus*), and sedges (*Carex* spp.) are common plant species. This wetland has been impacted by silt runoff from the adjacent farm fields as well as by the roads that may be influencing the hydrology. It supports an animal species of special concern. Maintaining the hydrology is critical to the survival of this species at this site.

The wetlands are noted as an area of wetlands in the Township designated as having high priority statewide significance in *A Natural Areas Inventory of Lehigh and Northampton Counties, Pennsylvania*. The *Nazareth Area Multi-Municipal Comprehensive Plan* stated that Rismiller Woods and Moorestown Wetland — should be protected by simple acquisition or a conservation easement.

2.3.4 Knecht's Ponds

This site is a gently sloping forested area that includes an Ephemeral Fluctuating Pools Natural Community. There are at least 12 vernal pools here, possibly more. This site has the potential for several plant species of special concern.

2.3.5 Rissmiller's Woods

This site supports a good to fair quality example of an Ephemeral/Fluctuating Natural Pools Natural Community and a good quality population of a PA-Rare shrub species. The ponds, as well as streams and springs that also occur here, create a diversity of microhabitats which support a large diversity of herbs, ferns, and graminoid species. This variety of wetland microhabitats also makes the area excellent breeding habitat for amphibians. The area has seen disturbance in the past from logging, though most of the forest is currently in good condition. These woods also provide a forest corridor connecting the sizable forests at Jacobsburg Environmental Education Center with Blue Mountain. This site will be best protected by maintaining existing forest and limiting the fragmentation of the forest on the surrounding landscape.

2.3.6 Bushkill Creek

The Bushkill Creek, which has its beginnings in Bushkill and Moore Townships at the base of the Blue Mountain, bisects Bushkill Township flowing from the northwest to southeast through rolling farmland and Jacobsburg State Park. It is perhaps the most defining natural resource within the Township. In total, the Bushkill Creek Watershed encompasses 80 square miles of Northampton County, PA, stretching from Blue Mountain Ridge to the Delaware River in Easton, PA. The upper reaches and headwater tributaries within Bushkill and Moore Townships support wild trout, including populations of naturally reproducing native brook trout found in reaches with forested riparian corridors. The section of the Bushkill Creek that runs through Jacobsburg State Park has historically been stocked with trout and has been a focal point for trout fishing within the region during the regular season. High quality vernal ponds which support many listed rare, threatened, and endangered species are also found commonly throughout the riparian woodlands along the base of the Blue Mountain within the Township.

Bushkill Creek is classified as a Special Protection Water in Chapter 93, Title 25 of the Pennsylvania Code, with a listing as High Quality – Cold Water Fishes (HQ-CWF). Many studies conducted on the Bushkill Creek have determined that groundwater recharge and discharge along the wooded slopes of Blue Mountain provides a critical source of high quality baseflow to the Exceptional Value wetlands and High Quality headwater tributary streams, including Sobers Run which is listed in Chapter 93 as Exceptional Value (see below). The clean, cool waters of the upper Bushkill Creek Watershed support a Class A Wild Trout Fishery within Bushkill Creek between Tatamy Borough and the City of Easton.

2.3.7 Sobers Run

Sobers Run is located entirely within Bushkill Township and is a major tributary to the Bushkill Creek. Sobers Run originates from a collection of spring seeps, wetlands, and vernal ponds at the base of the Blue Mountain Ridge in the northcentral and northeastern portions of Bushkill Township. West Branch Sobers Run and the main stem of Sobers Run meet at the northernmost point of Jacobsburg State Park and flow south through the Park to a point of confluence with the Bushkill Creek. The Sobers Run watershed is approximately 9.5 square miles, representing approximately 11% of the total watershed area of the larger, 80 square mile Bushkill Creek watershed. Sobers Run is listed as an Exceptional Value stream in Chapter 93, Title 25 of the

Pennsylvania Code and supports natural reproduction of wild trout, including populations of native brook trout. The riparian corridor of Sobers Run is almost entirely forested, with optimal buffer widths for water quality protection and support of healthy aquatic ecosystems.

The Sobers Run watershed has been a high priority for Open Space preservation. Many larger properties along the stream have been preserved since 2005 using a combination of local, county, and state funding through the Township's Open Space Program. Several large farms were preserved under conservation easements sold to the Township. Other larger tracts were purchased "fee simple" by the Township for the purpose of public use for passive recreation.

3.0 Bushkill Township's Land Preservation Policies

The 1979 Comprehensive Plan outlined adherence to the Pennsylvania Environmental Quality Board's 1976 Environmental Master Plan and identified an overall policy to "best protect the area's primary agricultural lands, unspoiled streams and watersheds, and scenic beauty." It specifically declared, "it shall be the Township's environmental policy to protect and conserve the productive capacity, resource potential, ecological significance and esthetic and open space values of its prime farmlands; to protect watersheds from development threats to the rare, unique and fragile values present there, and to maintain high quality streams within these watersheds; to protect natural instream uses, such as natural propagation of fish and other stream values from pollution or the severe effects of increased runoff and aggravated low flows; protect stream resources by maintaining critical recharge areas; to protect against the severe effects of increased runoff and aggravated low flows by limiting development in the floodplains and surrounding area; to protect stream resources by maintaining critical recharge areas; and to preserve open space and woodlands and their social, educational and recreational values for the benefit for the Township residents. Particular attention should be given to stormwater management and the preservation of the character and quality of the Bushkill and Monocacy Creeks."

Specific policies were outlined for:

- Prime farmlands;
- Water resources;
- Wastewater management;
- Residential development;
- Commercial areas and uses;
- Industrial areas;
- Recreation;
- Municipal services and facilities;
- Traffic circulation; and
- Blue Mountain and the Appalachian Trail.

The Nazareth Area Multi-Municipal Comprehensive Plan also identified critical elements to future land-use. Several of the specific elements can be accomplished through a comprehensive plan for the preservation of open space by the Township. These include:

- To protect important and vulnerable natural areas and features from inappropriate development;
- To preserve prime farmland and to promote agricultural operations;
- To coordinate the location and density of development with the availability of appropriate infrastructure including roads, sewage disposal and water supply;
- To provide sufficient areas for development to meet expected needs for housing and other development;

- To preserve the viability and attractiveness of currently developed areas; and
- To promote the vitality of the area's boroughs and villages.

The importance of environmental and agricultural preservation was stressed in the report. The report states that because environmental degradation would result from development or that desirable values would be lost, no development should take place in Environmental Protection areas. These areas include:

- Floodplains;
- Wetlands, including a 50-foot buffer;
- Slopes of greater than 25 percent;
- 1st, 2nd and 3rd order streams and waterbodies, including a 50-foot buffer;
- 4th order and higher streams, including a 100-foot buffer; and
- All very high or high conservation value areas defined with overlapping natural features, such as:
 - Woodlands and potential hydric soils (as identified on Map 15);
 - All riparian woodlands (woodlands within 100 feet of streams); and
 - All woodlands that are within other significant natural areas, as defined and identified in the plan.

In addition to the general types of environmental resources noted in the plan, the "Future Land-use Plan" depicts that much of the areas designated for Environmental Protection were in Bushkill and Moore Townships. Two Bushkill Township resources were specifically noted for preservation. These were the:

- Jacobsburg Environmental Education Center/State Park and
- Blue Mountain Natural Area.

Similarly, the plan discusses the goal of preserving the most agriculturally productive soils, keeping the land in agricultural use and protecting agricultural operations from incompatible uses. Many Agricultural Preservation areas noted on the "Future Land-use Plan" are in Bushkill Township.

In 2012, the Bushkill Township Zoning Ordinance was revised and adopted, to include protective buffers on wetlands, vernal ponds, and watercourses (e.g., streams, creeks), as follows:

- Wetlands – 50 feet
- Vernal Ponds – 150 feet (as measured from center)
- Watercourses – 100 feet

3.1 State Laws and Regulations

Pennsylvania has enacted several laws to allow the creation of this Open Space Plan, as summarized below. Copies of the pertinent laws and regulations described hereafter are provided in Appendix A.

3.1.1 Act 177 of 1996 (Creation of EACs)

Act 177 of 1996 authorized municipalities to create environmental advisory councils. This act states "The governing body of any municipal corporation, or group of two or more municipal corporations, may by ordinance establish an environmental advisory council to advise other local governmental agencies, including, but not limited to, the planning commission, park and recreation boards and elected officials, on matters dealing with protection, conservation,

management, promotion and use of natural resources, including air, land and water resources, located within its or their territorial limits."

An environmental advisory council shall have the power to:

1. Identify environmental problems and recommend plans and programs to the appropriate agencies for the promotion and conservation of the natural resources and for the protection and improvement of the quality of the environment within its territorial limits.
2. Make recommendations as to the possible use of open land areas of the municipal corporations within its territorial limits.
3. Promote a community environmental program.
4. Keep an index of all open areas, publicly or privately owned, including flood-prone areas, swamps and other unique natural areas, for the purpose of obtaining information on the proper use of those areas.
5. Advise the appropriate local government agencies, including the planning commission and recreation and park board or, if none, the elected governing body or bodies within its territorial limits, in the acquisition of both real and personal property by gift, purchase, grant, bequest, easement, devise or lease, in matters dealing with the purposes of this subchapter.

3.1.2 Act 442 of 1968 (Preserving Land for Open Spaces)

The purpose of Act 442 of 1968 is "to clarify and broaden the existing methods by which the Commonwealth and its local government units may preserve land in or acquire land for open space uses. The Legislature finds that it is important to preserve open space and to meet needs for recreation, amenity, and conservation of natural resources, including farm land, forests, and a pure and adequate water supply. The acquisition and resale of property interests authorized by this act are hereby declared to be for the public benefit, for the advancement of the public health, safety, morals and general welfare of the citizens of the Commonwealth, and for the promotion of sound land development by preserving suitable open space and concentrating more dense development in nearby areas."

3.1.3 Act 153 of 1996 (Amending Act 442)

Act 153 of 1996 amends Act 442 of 1968 entitled "'An act authorizing the Commonwealth of Pennsylvania and the counties thereof to preserve, acquire or hold land for open space uses," expanding its scope to include all local government units throughout this Commonwealth; adding definitions for "local government unit," "planning commission" and "transferable development rights"; providing for local option and for transferable development rights; and further providing for planning requirements, for limitations on exercise of powers, for acquisitions of real property interests, for public hearings, for property acquired in fee simple, for assessment of property, for termination or other disposition of open space property interests and for utility rights-of-way and underground gas storage areas."

3.1.4 Act 4 of 2006 (Amending Act 442)

Act 4 of 2006 amends Act 442 of 1968 entitled, as amended, "'An act authorizing the Commonwealth of Pennsylvania and the local government units thereof to preserve, acquire or hold land for open space uses," defining "municipal corporation"; further providing for property acquired in fee simple and for local taxing option; and making an editorial change."

3.1.5 Act 115 of 2013 (Amending Act 442)

Act 115 of 2013 amends Act 442 of 1968 entitled, as amended, "An act authorizing the Commonwealth of Pennsylvania and the local government units thereof to preserve, acquire or hold land for open space uses," further providing for local taxing options."

Act 115 authorizes the Commonwealth and its local government units to preserve, acquire or hold land for open space uses and provides for municipal referenda for dedicated open space taxes. The amendment provides that in addition to acquiring land and easements, up to 25% of the annual revenue from the levied open space tax may be used for costs associated with design, engineering, improvement, and maintenance of open space consistent with approved plans.

The primary focus of the Township's open space program shall be land acquisition via conservation easements and fee simple purchases. However, the Township also recognizes that public enjoyment, including access and use of suitable open space is an important public benefit that it wishes to provide. Accordingly, during each fiscal year that Bushkill Township imposes a 0.25% Earned Income Tax for open space purposes, up to 25% of the collected revenue may be used to fund improvements that enhance public access on Township-owned parcels (aka Improvement Funds).

Funding of improvement projects shall be considered on a case-by-case according to the process outlined below:

- At the direction of the Board of Supervisors, the EAC shall review and evaluate potential improvement projects.
- EAC shall determine a proposed project's consistency with relevant Township and regional plans (i.e. comprehensive, park and recreation, open space, Official Map, Zoning Ordinance, Subdivision and Land Development Ordinance, etc.).
- EAC may coordinate its review with additional Township boards and committees including the Planning Commission, Park and Recreation Committee, Zoning Hearing Board to identify potential projects, costs, implementation, and additional methods of funding.
- EAC shall submit a formal recommendation to the BOS for the allocation and use of the Improvement Funds.
- BOS will consider the EAC's recommendation at a public meeting.
- Any Improvement Funds not designated toward a specific project within the fiscal calendar shall be reallocated to the Township's open space budget for future acquisitions and improvement projects.

3.2 Local Ordinances / Zoning

Article 9 of the Bushkill Township Zoning Ordinance addresses the protection of the Township's natural resources including, floodplains, wetlands, streams, watercourses, lakes, ponds, riparian buffers, wetland buffers, steep slopes, and woodlands. The purpose of the ordinance is as follows:

- To protect the high quality natural resources found within the Township in order to maintain the characteristics of the neighborhoods and overall quality of the community.
- To guide development goals and strategies for natural resource protection by requiring new development applications to assess natural resources within the development.
- To guide new development within the Township to protect intact natural resources while maintaining an equitable economic return.

Bushkill Township is one of the relatively small number of municipalities that has adopted an Official Map which supports its greenway and open space planning process. The Official Map is an ordinance, and the current version which includes riparian woodlands derived from woodlands mapping by LVPC (2005) was adopted on April 21, 2005.

Article IV of the Pennsylvania Municipalities Planning Code (Act 247 of 1968, as amended by Act 170 of 1988), empowers the Township to enact an Official Map and to provide for its administration, enforcement and amendment under the general purpose of promoting the health, safety and general welfare of the Township. Under the statute the Official Map may include, but is not limited to, proposed public parks and open space reservations, and pedestrian ways and easements, and that which has been identified for public needs, and are consistent with the Comprehensive Plan of the Township. A copy of the Official Map is provided in Appendix B.

3.3 Committees

In addition to its Board of Supervisors, Bushkill Township has a Planning Commission, Zoning Hearing Board, Park and Recreation Board, and Environmental Advisory Council that all deal with the various components of land development, planning, public recreation, environmental protection, and land conservation issues. All land preservation decisions are ultimately made by the Board of Supervisors, with review and input from these other committees.

4.0 Public Participation for Open Space Plan Development

During the November 8, 2005 municipal election, Bushkill Township residents were asked to vote on the following referendum:

QUESTION

"Do you favor the imposition of an additional Earned Income Tax at the rate of 0.25% by Bushkill Township to be used for financing the acquisition of open space; for the purpose of acquiring forest and agricultural conservation easements; and for the purpose of acquiring property development rights?"

YES or NO

Plain English Version:

The ballot question asks the voters of Bushkill Township whether the Township should impose an additional Earned Income Tax at the rate of 0.25% on an annual basis to purchase land or interests in land for preservation and conservation of open, undeveloped land in Bushkill Township. The Township would use the money to do one (1) or more of the following:

1. Acquire forest and/or agricultural conservation easements. The Township could purchase forest and/or agricultural conservation easements, or participate in State or County land preservation programs that acquire forest and/or agricultural conservation easements. An agricultural conservation easement allows the landowner to retain his/her land and use it for farming and other agricultural purposes. Conservation easements on forested lands allow the landowner to retain his/her land and use as forested land, with timbering conducted under a forest management plan/timber harvesting plan.

2. Finance the acquisition of open space. The Township could purchase undeveloped land from landowners in the Township in order to protect sensitive natural areas such as woodlands, stream valleys, or other unique natural resources or habitats.
3. Acquire property development rights. Under this option, a landowner would sell the development rights of a property to the Township. The landowner would retain the property, but the property could not be developed.

A vote of "YES" to the ballot question approves the imposition of an additional Earned Income Tax at the rate of 0.25% upon Township residents for the foregoing purposes. If this ballot question is approved by the voters of Bushkill Township, the total earned income tax collected in Bushkill Township will be 1.25% (at time of referendum).

As the referendum was passed, two public meetings were held to gather community input into the planning process. The initial meeting was held on January 11, 2007 and a second meeting on February 8, 2007. Approximately forty residents, as well as the EAC members, were in attendance at the first meeting and over thirty residents were in attendance at the second meeting. One member of the Bushkill Township Zoning Hearing Board was present at both meetings and two Supervisors were present at the second meeting. A major focus of the first meeting was distinguishing the purchase of development rights program from the implementation and application of the Official Map. Preservation priority input was received from attending citizens at both meetings. This was done through both audience participation and through a questionnaire that was distributed at both sessions to gain insight from those who may not have felt comfortable in discussing their feelings in a public forum. Approximately one-half of the participants submitted completed questionnaires.

Bushkill Township has addressed its recreational and open space goals through its Comprehensive Park and Recreation Plan. Cooperative efforts with Jacobsburg State Park/Environmental Education Center and State Game Lands located in the Township can also serve to improve the quality of outdoor recreation for its citizens and should be actively pursued. While the importance of recreational open space was noted, most respondents felt that recreation areas, particularly those devoted to active recreation, were better served through other programs.

Those in attendance felt that preserving open space in Bushkill Township was very important. Twenty-nine of the thirty-two responses gave it a "5" on a scale of one to five; with two others giving it a "4." The only other response was a single "1" for low importance.

On the opposite end of the spectrum, most respondents reacted negatively to the desirability of residential development in the Township; twenty-six people gave it a "1" and three people gave it a "2." Two people rated it a neutral "3" and one person gave it a "5" for highly desirable.

When asked about what features made the Township a desirable place to live, the following were the written responses in order of what was the most important:

<u>Feature</u>	<u>Total Highest Value</u>
Sobers Run (exceptional value stream)	24
Bushkill Creek	23
Farms	21
Woodlands	20
Hilltop views	14
Residential Development	1

The following open space goals were discussed and prioritized as being important in the returned questionnaires:

<u>Feature</u>	<u>Total Highest Value</u>
Water Quality	27
Wetlands/Water recharge areas	24
Wooded areas	23
Farmland/Prime Ag	22
Scenic views, Historic resources	17
Land for Public Use (Existing)	10
Land for Public Use (New)	9

At the end of each meeting, the attendees were asked to prioritize the allocation of funds in regard to the various items that had been noted during the respective discussions. Since the Township anticipated having approximately \$200,000 to spend on open space in the first year of the program, each person who participated was given four "dots" with the instruction that each represented \$50,000. They were instructed to vote on how they wanted to spend the money. They could allocate all \$200,000 on one type of resource or divide it as they preferred. When asked to prioritize spending on resource protection in the immediate future, priorities shifted somewhat from the general discussion noted in the questionnaire. The voting is recorded below:

**January 11 & February 9, 2007 Meeting
Open Space Priorities
Noted by Respondents**

Farmland	45
Watershed Protection	24
Greenway Corridors	16
Buffers to Streams	10
Wildlife Habitat	7
Wetlands	7
Exceptional Value Stream	6
Buffer Areas to Open Space	5
Historic Sites	5
Brownfield Restoration	3
Monocacy Creek	3
Coldwater Streams	3
Stormwater Management	1
Migratory Birds - Snow-geese Habitat	1
Viewsheds	1
Jacobsburg - Henry's Woods	*
Trails	*
Mountain	*
Biological Diversity	*
Legal Defense	*
Streams	*
Recreational Open Space	*

*Items were discussed but did not receive any votes for spending

4.1 Farmland Preservation

The Northampton County Farmland Preservation program preserves farms by purchasing conservation easements from farmers who desire to continue farming their lands. The mission of the County program is "To promote stability of the agricultural values and general welfare of Northampton County by the preservation of farmland and to encourage the economic and financial health for the long-term sustainability of agriculture." It is important to note that the County's program allows preserved farmland properties to be developed for agriculture with construction of supporting buildings, structures, and other facilities, which qualify as or support current farming practices. An example might be the construction of large greenhouses to allow longer growing seasons and specialty crops.

Bushkill Township may use its own Open Space Program funds to parallel or supplement the County's program, or to preserve farmland on its own. Bushkill Township may use its funds on properties which do not qualify for County funding because they are not high on the County's priority list. Without funding, the pressure from development will cause the beauty and the productivity of these farms to be lost, the groundwater to be negatively impacted with respect to lack of recharge and increased stormwater runoff, and the nature and character of the Township to be irrevocably altered. The relatively low cost of municipal services associated with farmland or agricultural land-uses versus other land-uses also makes preserving farmland a key issue in future planning.

Bushkill Township shall work with property owners to promote participation in the County's agricultural preservation program. The Township should promote its own conservation easements for farms that do not rate highly on the County list or cannot wait until the County program gets to them for preservation. Farms that may not have the highest quality soils, but which form critical components of greenways, should be considered for Township easements.

The overwhelming consensus of public participants in the development of Bushkill Township's Open Space Plan was that preserving farmland was a first priority to preserving open space, helping to maintain adequate groundwater recharge and ensuring the future of agricultural activities in the Township. It is important to note, however, that the six priority areas chosen for preservation by public participants were directly or indirectly related to water quality or water resource management and protection. When summed, the votes for these six priorities yielded seventy (70) votes, as opposed to forty-five (45) votes for farmland preservation.

4.2 Watershed Protection

Since Bushkill Township does not have public water and sewer throughout the vast majority of the Township, it is very important to ensure that there will be sufficient groundwater recharge to satisfy the community's needs. This was recognized in the revised Nazareth Area Multi-Municipal Comprehensive Plan and is an important consideration for open space planning in Bushkill Township. Lands where water supplies are advantageous for commercial extraction are particularly at risk with regard to impacts on surrounding, or down-gradient, groundwater supply wells, and should be protected as open space.

The best way to protect drinking water supplies and surface water quality is to protect the lands that surround our reservoirs, streams and aquifer recharge areas. At present, there are no State or Federal laws or regulations which will permanently protect watershed or recharge lands from development. The direct and indirect pollution from buildings, roads, parking lots, storm sewers, lawn chemicals, etc., can degrade ground and surface water quality. The destruction of wetlands and impingement on floodplains, which provide natural filtration of stormwater run-off, further degrades our natural resources and water quality. Unless the lands that provide

groundwater recharge or that surround water supplies are permanently protected, the natural resources and water quality will be degraded by development.

The Township Official Map designated a 150-foot buffer zone measured from the top bank of both sides of any stream which appears on the U. S. Geological Survey quadrangle maps. The strong response of the public participants of the importance of watershed protection and stream buffers indicates that these regulations, which may be changed by future resolution, should be made permanent through conservation easements, and to the extent possible through voluntary participation in the Township's open space program. Focusing on the purchase of conservation easements, in addition to protection through regulation, resonated very strongly at the first public meeting and was discussed in greater detail during the second public meeting.

4.3 Greenway Corridors

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. 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. (Source: DCNR's *Pennsylvania Greenways: An Action Plan for Creating Connections*)

Greenways give the opportunity for people to travel longer distances among changing landscapes and habitat types. Greenways make it possible for more people to enjoy the popular activities of hiking, biking, walking, boating, and similar recreation activities. Parks can be linked together by trails which eventually wander far into the most rural areas of Bushkill Township. Wildlife species also need corridors so that they can migrate between nesting and foraging areas, as well as maintain healthy genetics and local populations. Plant species also need a variety of environmental conditions to survive and regenerate. It is not enough to preserve isolated parcels of unconnected open spaces. Integrating Bushkill Township's system of open spaces would aid in preserving the natural links, or greenways, upon which both plant and animal species rely. Bushkill Township is fortunate to have the State Game Lands along the Blue Mountain Ridge and Jacobsburg Environmental Education Center, as well as Bushkill Creek and Sobers Run, serving as a "hub and spokes" for an extensive Greenway corridor system.

The Bushkill Township Official Map specifically identifies greenways to be reserved for open space. The establishment of greenways, particularly as methods to preserve Bushkill Creek and Sobers Run, was seen as a high priority. Since many of the riparian corridors can function as greenway corridors and since Bushkill Township's streams rate highly on the County's open space and natural features mapping, coordination with the County open space preservation program is a sound objective. The Township should coordinate activities along the Blue Mountain with County, State agencies and local land trusts.

4.4 Viewsheds

The value of open space to the community at large is often visual. There are many wonderful viewsheds in the Township. From the scenic beauty of Blue Mountain to the beautiful clean

waters of the Bushkill Creek, Sobers Run, and the tributary to East Branch Monocacy Creek, Bushkill Township has some of the most spectacular countryside in eastern Pennsylvania. Habitat protection and agricultural preservation are very important; on a day-to-day basis, the appearance of open space has a significant effect on the community's perceived quality-of-life. Maintaining the wide-open vistas and scenic viewsheds is an important part of preserving Bushkill Township's rural character and desirability.

Preservation of scenic views was an important issue for the public. The conservation of highly visible lands, such as along Blue Mountain and well-traveled public roads, will result in a greater appreciation of the beauty of the community. Therefore, this social aspect of conservation should be considered in the acquisition program.

5.0 Open Space Plan Preservation Categories and Acquisition

5.1 Preservation Categories

Functional Preservation Categories for the Open Space Plan include the following:

1. Natural Resource Protection Areas - includes animal and vegetative habitat, stream corridors, and wetlands
2. Passive Outdoor Recreation – includes sitting areas, arboretums, trails, parks
3. Resource Management - forests, fisheries, farmland
4. Protection of Public Health and Safety - floodplains, wetlands, unbuildable areas or areas with limitations for development including steep slopes, high water table, shallow depth to bedrock
5. Areas that Shape Community Character or Design - buffer strips, greenways, open space dedications related to development, trails, parks
6. Historic or Archeological Sites – including structures and grounds

5.2 Acquisition Strategies

Bushkill Township's open space acquisition strategies are comprised of tools and processes by which the Township's open space inventory can be increased, as supported by Township residents. These strategies guide open space acquisition to protect critical lands, manage development, and protect the Township's natural resources while enhancing quality of life and providing appropriate passive recreational opportunities.

Acquisition strategies used by the Township's Open Space Program include:

- Conservation Easements
- Fee Simple Purchase for Long-Term Holding
- Fee Simple Purchase for Short-Term Holding

5.2.1 Conservation Easements

A conservation easement is a legal agreement that limits future development by transferring certain rights from the landowner to a governmental entity and/or a nonprofit organization for conservation purposes. Conservation easements permanently restrict development while allowing property to remain in private ownership and ongoing uses which are consistent with conservation goals. Conservation goals may include agricultural protection, natural area preservation, timber production, passive recreation (e.g., trails, fishing, bird watching, etc.) and other activities determined allowable. Each conservation easement is tailored to protect the unique resources of the particular property and remains with the land forever. By purchasing

conservation easements, Bushkill Township can help landowners retain private ownership of their property, while protecting important farmland, environmentally sensitive areas, natural areas, scenic resources, and greenway corridors. Conservation easements enable the Township to accomplish its open space objectives without owning the land, keeping land in private ownership and on tax rolls (generally at lower tax rates associated with preservation).

NOTE: Public access is not required or implied under a Township conservation easement, but public use of the easement area may be granted by the landowner, depending on the terms of conservation easement and potential use of supplemental funds (e.g., county or state funds) for purchase of the conservation easement from entities, which may require public access. Bushkill Township shall strive to utilize such supplemental funds whenever available and applicable to the intended type of preservation and ongoing use of the property. Use of these supplemental funds is commonly a "match" against some amount of Township funds and thereby increases the total amount of preservation funding available to the Township. In most cases, the Township can at least double its investment by using supplemental funds, and effectively double the amount of preserved land for the same amount of Township funds. It should be noted, however, that County and state funds often require some form of public access, which may or may not work well for the proposed preservation of a specific property. Where public access is not acceptable, the Township may choose to not use supplemental funding, but rather purchase a conservation easement strictly using Township funds, which do not require public access. NOTE: Where allowing public access improves opportunities for passive recreation (e.g., fishing, trails, bird watching, etc.) and the landowner is agreeable to such public access, the Township may place a higher priority on the preservation of that property over other similar properties, which will not allow public access. Lastly, public access may be limited or unlimited, as determined by the landowner, to best protect the landowner's interests. It should also be noted that state laws now protect landowners and conservation easement holders (e.g., Township) where public access is allowed.

As noted above, the landowner continues to own the land placed under a conservation easement and retains many rights of use. An easement document might specify, for example, that the owner reserves the right to:

- engage in agricultural production;
- build barns, sheds, and other farm structures;
- use, maintain, and expand an existing residence;
- manage woodlands for timber production or conduct a Christmas tree operation; and/or
- subdivide the land and construct one or more additional residences in agreed-upon areas or "building envelopes."

Foreclosure of a pre-existing lien (e.g., mortgage, tax lien) on the property would extinguish the conservation easement restrictions. For this reason, conservation easement holders should always complete a title search before accepting a conservation easement. If the property is mortgaged, a subordination agreement needs to be obtained from the mortgage holder so that a later foreclosure will not terminate the conservation easement. A Subordination Factsheet has been developed for submittal to financial institutions explaining why a conservation easement is a benefit to the property and does not diminish the marketability or value of the collateral below. The factsheet is provided in Appendix C.

Bushkill Township will utilize conservation easements as its primary tool for land preservation. Standard conservation easement language is provided in Appendix D. This standard conservation easement language will provide consistency among projects, helping to expedite acquisition negotiations, as well as monitoring and enforcement once a property is preserved.

State law, under Pennsylvania's Recreational Use of Land and Water Act, protects landowners and conservation easement holders (e.g., Township) where public access is allowed free of charge, by limiting liability, resulting from personal injury or property damage.

5.2.2 Fee Simple Purchase for Long-Term Holding

Bushkill Township may purchase properties “fee simple” through its Open Space Program where ownership is more desirable and/or practical than establishment of a conservation easement in order to preserve the significant conservation values of those properties. The Township will acquire full interest in such properties only when ownership by other qualified entities is not possible. Gaining full ownership of the land provides the greatest amount of control over the use and management of a property. Use of the Township’s Open Space Fund for fee simple purchase requires by law that the property be effectively preserved. The Township may not use acquired property for uses that are not consistent with conservation goals outlined by the Open Space Program and the funding mechanism which supports the Program. Any resale, or divestment, of the property by the Township requires establishment of a conservation easement to protect the conservation values of the property into perpetuity under all future ownership (see below). Instances where Township-ownership of land may be desirable include the following:

- **Public Access and Recreation.** Township ownership is most appropriate for properties within the municipal park system that may include trails, stream access, hunting and other recreational amenities. For example, the Township may purchase a privately-owned property to create a trail and allow public use along one of its designated greenway routes, thereby eliminating liability and maintenance concerns for public access through privately owned property.
- **Flexibility in Use.** Fee simple ownership enables the Township to use the preserved land for a range of appropriate open space purposes. For example, the Township may alternate use of land from year to year as passive recreation, community gardening, sustainable timber harvesting, and/or lease to a local farmer.
- **Funding Options.** In addition to dedicated open space funds authorized by Act 153, the Township can use different revenue sources to purchase land, including general funds, user fees, and bond issues.
- **Maximum Control and Management.** The Township may be the most appropriate owner of land that features highly sensitive natural resources and wildlife that require long-term, active stewardship. In addition to resource management, the Township can provide monitoring and enforcement to ensure protection and preservation, as needed.

Prior to fee simple purchase for long-term holding of any property, the Township shall address the intended future use of the property (i.e. parkland, passive open space, greenway connection, etc.). Furthermore, the Township shall evaluate the long-term management and financial obligations associated with owning the property in accordance with the Long-Term Acquisition Form provided in Appendix E. All management and maintenance of long-term acquisitions shall be funded through the Township’s Open Space Program as long as the funding mechanism (i.e., 0.25% EIT tax dedicated for the Program) remains in place.

NOTE: Land already subject to an existing conservation easement ("eased land") will not generally be targeted for purchase under the Township Open Space program, as it is already preserved under the existing conservation easement. An example may be where a property is important for allowing or improving public use, such as for parks, trails, etc., and purchase by the Township is determined to be the only means of such establishment. Land protected merely through laws, regulations, and/or ordinances ("protected lands") will be considered for acquisition through the Township's Open Space Program as a method to ensure permanent protection, understanding that the pertinent laws, regulations, and/or ordinances may be repealed or amended. Existing eased land may be considered for donation to the Township as a method to improve protection, especially where existing conservation easements are not as strict as Township conservation easements.

5.2.3 Fee Simple Purchase for Short-Term Holding

The Township may purchase fee simple interest in a property to maintain it as open space without the intent of long-term ownership by the Township, but rather with the goal of reselling it to a third party, subject to a conservation easement that accomplishes one or more of the Township's identified conservation goals. This method of preservation is called "acquisition-and-resale," and shall only be exercised when an owner cannot or will not agree to a conservation easement as the first means to preserve their property.

As part of acquisition-and-resale, the Township shall establish a conservation easement on the property at the time of resale. The conservation easement shall be held by the Township (and possibly other funders of the acquisition, if applicable). Recognizing that a conservation easement will impact a property's resale value, the Township will minimize its overall investment by using the proceeds of the resale to replenish the Open Space Fund to the maximum amount possible while still preserving the maximum amount of the property. The primary objective of resale is to relieve the Township of ownership and maintenance responsibilities, and to return the land to the tax rolls.

The Township shall always attempt to resell acquired properties in their entirety without subdivision to a single buyer, subject to a conservation easement to be held by the Township and which best protects open space resources. Where resale of a large property is unsuccessful, and in order to best recover the invested funds, the Township may subdivide the property in a manner that is consistent with the intent of the Open Space Program (e.g., to maximize open space preservation) and in accordance with guidance from the County's Farmland Preservation Board when agricultural lands and use are pertinent. This subdivision may include the rights for a minimized building envelope for residential and/or agricultural operations.

The Township may employ outright purchase of a property in order to expedite an extremely time-sensitive preservation opportunity or to negotiate with a landowner that is not interested in a conservation easement and simply wants to sell a property. In these cases, Township acquisition may save an at-risk preservation opportunity that is not suitable for the lengthier process of negotiating and establishing a conservation easement.

Buying land and reselling it with a conservation easement can be straightforward, but it carries the risk that the property may not resell quickly, or for as much as the Township had anticipated. Also, properties purchased may contain improvements such as houses, barns, outbuildings, and

other structures. If reselling the property is a prolonged process, the Township will have the responsibility and liability for securing and maintaining such improvements.

Since the inception of the 2007 Bushkill Township Open Space Plan, several property owners have approached the Township with requests to purchase their properties in a quick manner, with no interest in selling conservation easements to the Township as an alternative. Such requests are often due to the transfer of the property to an estate consisting of multiple family members. These properties typically do not meet the criteria established in the Township's long-term holding described in Section 5.1.2 and typically consist of developable farmland with or without existing structures (i.e. farmhouse, barns, out-building, etc.). These properties typically have prolonged maintenance needs, such as upkeep of the structures, leasing of farmland, and control of roadside vegetation. Furthermore, these properties are removed from the local tax roll for Northampton County and Nazareth School District, if purchased by the Township. Fee simple purchase may be the only viable means of ensuring the preservation of these properties, but based on the aforementioned issues, resale with a protective conservation easement on the majority of the property with proceeds returning to the Open Space Program may be the best overall outcome.

The primary objective of any acquisition through the Township's Open Space Program shall be the protection and preservation of significant open space resources. Acquisition and resale is not proposed as a real estate investment strategy to generate revenue for the Township. Rather, it is a means of preserving conservation values that might otherwise be lost to development while recovering a portion of the initial investment by reselling the property with a conservation easement protecting the majority, if not all, of the property. All returns from the resale shall be into the Township's Open Space Fund to drive future open space preservation activities. To the extent practicable, the Township will attempt to recover invested Open Space Funds as part of resale, noting that the value of the conservation easement placed on the property shall be maintained by the Township and that value is generally reflected in a lower resale amount.

The Township shall evaluate the long-term management and financial obligations associated with owning the property in accordance with the Short-Term Acquisition Form (Appendix F).

The following steps guide the Township through its consideration for acquisition-and-resale of properties purchased as fee simple for short-term holding:

1. Confirm Status of Property

Prior to considering the acquisition and resale approach to preserve a property with sufficient conservation value, the Township shall meet with landowner to discuss the owner's plans to sell or develop the subject property and to present conservation options available through the Township and other funding programs. Based on information learned, the Township shall assess the landowner's willingness to explore conservation easement options, as well as the actual threat or likelihood of development of the property. As part of this step in the process, the Township shall proceed as follows:

- Perform preliminary research to identify the legal landowner, ascertain whether the property is or was recently listed for sale, list price, days on market, offers made, etc.

2. Evaluate Property's Conservation Values

The Township shall determine whether preservation of a property will accomplish objectives and recommendations identified in this Open Space Plan. Each property considered for acquisition and resale shall be evaluated according to the Township's established open space criteria and scoring system. If the Township would not pursue a conservation easement on a property due to insufficient conservation value, or threat(s) of other concern, then it should not pursue fee simple acquisition and resale. As part of this step in the process, the Township shall proceed as follows:

- EAC performs a site visit to identify and evaluate conservation values according to the Township's established criteria and to document its findings on an evaluation form.
- EAC drafts a preliminary conservation strategy for the property.
- If the EAC determines that the property is suitable for preservation and has a sound preliminary conservation strategy, the EAC shall present findings to BOS and recommend preservation through acquisition and resale.
- BOS directs EAC to proceed, or not.

3. Develop Conservation Strategy

If the Township determines that a property meets the Township's criteria for preservation under the Open Space Program, but is not available for protection through a traditional conservation easement purchase and the Township does not intend to own the property for public uses (e.g., as a preserve or passive recreation area), the Township shall draft a conservation strategy that maximizes protection of the identified conservation values and minimizes risk to the Township. Whenever possible, the Township shall keep a property intact and limit future subdivision and development to the greatest extent practicable as part of any resale. Secondary consideration shall be given to options that incorporate limited subdivision of the property into multiple parcels, only as necessary to resell the property in a timely manner to recover invested open space funds (returned to Open Space Fund account to drive additional, future land preservation), while preserving the majority of the property under a conservation easement in a manner that accomplishes conservation goals outlined in this Open Space Plan and which are consistent with the specific property. Under all circumstances, the conservation strategy shall proceed conservatively in order of the following options:

OPTION A: *Resale In-Kind to Single Buyer*

Under this approach, a property is retained in the same basic configuration as when the Township acquired it, with a single conservation easement established and sold to a single buyer. The conservation easement shall be tailored to protect the identified conservation values and prohibit any future subdivision of the property. Any existing structures/uses may be delineated to be held out of the conservation easement area, and the ongoing use may be maintained by any new owners upon resale. For example, a farmhouse and out-buildings may remain and may be used and improved/modified (only within adjacent area that is not within

the conservation easement area) by a new owner that purchases the property from the Township, with the land under the conservation easement to remain in agricultural use or returned to natural area and subject to all terms and conditions of the conservation easement agreement. The conservation easement shall be held by the Township, and other funding partners as applicable.

If a property/parcel is vacant or the structures are dilapidated and require demolition/recycling, and the land area to be placed under conservation easement is at least 9 acres, the conservation easement may incorporate a "floating building envelope" that allows a future owner to site the building envelope subject to certain restrictions, as herein described. Provisions within the conservation easement agreement shall restrict the building envelope acreage to a minimum of 1 acre and a maximum of 3 acres, with a minimum of 90% of the property to be preserved as farmland or natural area under the conservation easement. The building envelope location shall have minimized impacts on the conservation values of the property and shall require Township review and approval of the final location prior to any clearing, earth disturbance, or land development activities on the property.

As a general practice, the Township shall avoid recording conservation easements that do not incorporate a building envelope or create an undevelopable or unusable tract; thus diminishing resale value and marketability, and ultimately the return on the investment made by the Township. Note that all proceeds from resale shall be deposited into the Township's Open Space Fund.

OPTION B: *Farmette Subdivision*

Under this approach, larger parcels purchased by the Township for preservation purposes may be subdivided into two or more "farmettes," in accordance with input on appropriate size and use by the Northampton County Farmland Preservation Board. Each farmette will consist of at least 9 acres under conservation easement and a "floating building envelope" that allows a future owner to site the building envelope. Provisions within the conservation easement agreement shall restrict the acreage to a minimum of 1 acre and a maximum of 3 acres, with a minimum of 90% of the property to be preserved as farmland or natural area under the conservation easement. The building envelope location shall have minimized impacts on the conservation values of the property and shall require Township review and approval of the final location prior to any clearing, earth disturbance, or land development activities on the property.

This option would most likely be exercised by the Township only for larger properties/parcels which proven too difficult to sell for a reasonable return on investment as single-owner properties, as described above in Option A. To the extent practicable, the Township will strive to recover the investment value from the original purchase, excepting the amount of the appraised conservation value of the acreage that is placed under conservation easement and held into perpetuity by the Township.

Limited farmette development scenarios will depend on the unique characteristics of each property and associated conservation values. Minimum farmette size for agricultural lands shall

be based upon the recommendations of the Northampton County Farmland Preservation Board to best ensure ongoing agricultural use.

4. Estimate Transaction Costs

In addition to the appraised values, the Township shall generally incur transaction and closing costs related to both acquisition and resale of a property, which may include items such as:

FEE ACQUISITION

**Appraisal
Due Diligence
Professional Land Surveying
Closing Costs
Title Insurance
Loan Interest
Legal Review**

RESALE

**Appraisal
Easement Title Insurance
Closing Costs
Professional Land Surveying
Brokerage Fee
Legal Review**

The EAC shall work with the Township Manager and/or Board of Supervisors to develop and approve a list of transaction costs for the acquisition and resale of each property.

5. Develop Pricing and Revenue Objectives

As the Township is prohibited from paying more than a property's fair market value, the appraisal shall essentially guide the Township in negotiating a purchase price to acquire the property. Similarly, the Township shall align its anticipated resale price with the after-easement value presented in the appraisal report, consistent with its final conservation strategy.

The Township anticipates that revenue generated from the resale of the property will only cover a portion of its total project costs and that funds from the Township's Open Space Fund will be used to offset costs. At a minimum, the Township should estimate ultimate project expenses to cover the appraised conservation easement value, appraisal(s), survey(s), closing costs, due diligence activities, legal fees, real estate commissions, etc.). Note that the appraised conservation easement value is retained by the Township into perpetuity as the conservation easement holder.

6. Develop a Timetable

The Township shall make every effort to market short-term holding acquisition properties for resale within twelve (12) months of purchase. If submitted offers do not satisfy the Township's minimum reserve within twelve (12) months of being marketed, the Township shall consider revising its sales price and/or conservation strategy. Significant delays in resale or changes to the Township's conservation strategy may warrant a new or updated appraisal. The Township may also decide to lease the property to provide or maintain revenue until the property can be sold.

7. Market Property

Following the provision of Act 153, all sales of Township-owned property shall be through public auction or solicitation of bids with proper public notice. The Township shall reserve the right to reject all bids/offers, as necessary to protect Township investment.

The Township shall advertise the property in a manner that avoids the appearance of impropriety and preserves the public's confidence in the Township's Open Space Program. The Township shall consult with its solicitor to ensure all practices are consistent with municipal laws and state enabling legislation.

Prior to listing a property for resale, the Township shall draft a conservation easement agreement that is consistent with its Open Space Plan and conservation strategy. All marketing and advertising materials related to the sale of the property must clearly convey that the property is being sold subject to a conservation easement. The draft conservation easement agreement, including a site plan with the property boundaries, proposed conservation easement area, building envelope, future lots (if applicable), and other pertinent information shall be made available to all prospective buyers. As a preferred practice, the conservation easement agreement shall not be finalized or recorded until just prior to the sale with a specific buyer. This approach will allow the Township greater flexibility in modifying the conservation easement agreement, as necessary for adjustments in conservation strategy and terms of resale.

5.2.4 Alternative Acquisition by State and County Governments

Where seemingly advantageous for preservation of land and natural resources, the Township shall encourage County and State agencies that currently own or have interest in land within the Township to consider other land which is suitable or desirable for their ownership/interest.

5.3 Non-Acquisition Strategies

The Township relies on several planning tools which support or supplement the Open Space Program to better preserve and protect the land and water resources in Bushkill Township, including:

- Comprehensive Plan
- Official Map
- Municipal Ordinances

Provisions within these common planning tools often protect valuable land and water resources, which is commonly referred to as the implementation of "non-acquisition strategies," since protection is provided without acquisition of conservation easements or fee simple purchases by the Township. Such protection is often limited, however, and may be better served by a more restrictive conservation easement or fee simple purchase to maximize protection (e.g., prohibit vegetation cutting or clearing that may otherwise be allowed under land development ordinances). Furthermore, ordinances and plans may change, whereas acquisition under the Open Space Program provides more permanent protection. Appraisals conducted for Open Space Program acquisitions should account for these areas and the effects they may have on property value.

The Township's Open Space Funds shall not be used for establishment of voluntary conservation easements that are part of land development plan approvals or other activities that are subject to Township approvals sought by applicants.

5.4 Current Inventory of Acquisitions

The Bushkill Township Open Space Program has been very successful to date, with over 1,500 acres preserved throughout the Township, including:

- **520 Acres** - Conservation easements purchased through Bushkill Township's Open Space Program since 2007.
- **640 Acres** - Fee simple acquisitions purchased through Bushkill Township's Open Space Program since 2007.
- **340 Acres** - Pennsylvania Act 43 Agricultural Area Security Law and Act 149, which amends Agricultural Area Security Law. These Acts gives landowners the right to propose the creation of Agricultural Security Areas (ASA) to municipal governments. An ASA must contain 250 acres of viable agricultural land, which may comprise non-contiguous tracts of at least ten acres in size. They also enable the state and participating counties to protect farmland by purchasing agricultural conservation easements on eligible properties.

A map illustrating the current conservation easements and acquisitions is provided in Appendix G.

6.0 Implementation of the Open Space Plan

In determining which properties should be preserved under this Plan, the Township should consider how each property would meet the goals and objectives of the Open Space Plan. An inventory to catalogue specific parcels (acreage and ownership) and to evaluate and recommend specific preservation methods should be utilized. However, to maintain the integrity and objectivity of the Plan, and forestall premature disclosure, specific parcel identification should not occur until after property owners are contacted and their interest is ascertained. A copy of the Open Space Plan Flowchart, to be completed for each property, is provided in Appendix H.

6.1 Identifying Potential Properties for Open Space

The Township should plan to acquire specific properties or conservation easements, based upon the criteria established by the EAC. Potential criteria to be assessed by the EAC may include:

- a. Potential risk of development is high;
- b. Location is a critical linkage;
- c. Overall environmental integrity, sensitivity and/or quality is high;
- d. Overall farmland quality is high;
- e. Availability of additional funding sources exists;
- f. Willingness of owner to sell at or below fair market price exists; and
- g. Property satisfies multiple objectives of the Plan.

The Northampton County Natural Resources Plan sets goals, policies and implementation recommendations for the following natural features:

- Surface terrain and steep slopes;
- Stream (including: stream quality designations, headwaters streams, and riparian buffers);

- Floodplains;
- Wetlands (including potential hydric soils);
- Carbonate bedrock;
- Woodlands (including interior and riparian woodlands);
- Prime agricultural land;
- Significant natural areas;
- Mineral resources; and
- Groundwater.

6.1.1 Property Owners Contacted by Township

The Township will create a master list of properties that have high priority conservation values based on presence of significant natural features. The open space plan is predicated on voluntary decisions by property owners to preserve their property. The list shall only be used as a method to compare the conservation value of individual properties to ensure that the Township is spending its open space funds on appropriate properties. The Township, at its discretion may contact property owners of these high priority conservation parcels to open a dialog about the Township's open space plan.

6.1.2 Property Owners Request Open Space Information

Property owners that request that their properties be considered for preservation will have their properties rated against an "Open Space Criteria Evaluation Sheet." The EAC will keep the information on how properties score in relation to the plan criteria on file. Since the Township may use the relative importance of a property in its offer to purchase a conservation easement, this information shall not be made public until such time as the property is under agreement of sale.

6.2 Open Space Plan Flexibility

The implementation of the open space plan will have to be flexible. The Township has to be proactive in identifying key property types and reactive to property owners that want to participate. This is necessary because the sale or purchase of any interest in a property is at the discretion of a willing buyer. While it is a goal to be transparent and open in the discussion of property and that evaluations will be quantitative where possible, open space is often a qualitative issue. Since the acquisition of real estate is often sensitive in nature, with many property owners not wanting to have their properties, land values or asking price made public, the Township cannot be completely open in its discussions with the public. This sensitive nature of real estate acquisitions is recognized by the state Municipalities Planning Code and is why such deliberations are exempt from "sunshine" provisions. After any acquisition, the Township shall be able to demonstrate how its decisions were made.

6.3 Application Process

6.3.1 Application Form

An application form, available from the Bushkill Township website and provided in Appendix I, must be completed for a property to be considered for open space. The application form requires the following information:

- Tax Parcel Number/Numbers
- Location of property (roads, intersections, landmarks)

- Approximate acreage of entire property
- Approximate acreage to be preserved
- Farmland acreage
- Natural area acreage
- Brief description of land to be preserved (note items such as streams, woodlands, wetlands, agricultural lands, etc.)
- Confirmation that the property is fully owned by the applicant or that the applicant's lender will subordinate the mortgage to the conservation easement
- Map (plot plan, tax map, etc.)
- Landowner and contact person address and phone number

The completed application form is submitted to the Township office for review and consideration.

6.3.2 Initial Review of Application

Upon receipt of the initial application, the EAC will be presented the application for discussion. Upon a cursory review of the property via tax maps, aerial photographs, soil maps, and other readily available information provided by the property owner, the EAC may make a motion to perform a site reconnaissance of the property. Typically, site evaluations are conducted on weekends or weekday evenings, daylight permitting.

6.3.3 Scoring of Conservation Values

One of the more difficult tasks associated with the open space plan is determining the conservation values of open space properties under consideration for permanent protection. When speaking of "conservation value" in this sense, we are not talking about a monetary figure. Rather, we are speaking of the relative public benefit that comes with protection of open space.

Clearly, there is a fair amount of subjectivity when determining whether a particular property or portion of property is worthy of permanent preservation. Different people could look at the same property and develop different opinions about its value as open space. With that in mind, the EAC opted to develop a scoring or ranking system that can be used to eliminate some of the subjectivity that is inherent in placing conservation values on open space.

The scoring system assigns a point value to properties based on the presence (or absence) of certain amenities or natural resources. These amenities/natural resources include, farmlands, wetlands, steep slopes, historic significance, location adjacent to existing parks and preserves, and scenic views, to name a few. Points for each amenity are based on a weighted scoring system that assigns a higher value to resources that are generally viewed as most important.

This scoring system "rewards" properties that contain several amenities or natural resources. For example, if a property is home to wetlands, flood plains, an agricultural operation and scenic views, it will score relatively high. Conversely, a property characterized by only one amenity would not score particularly well, although there would still be public value in protecting any open space.

Since the initial Open Space Plan's inception in 2007, the EAC has scored dozens of properties and has a good sense of what scores well and what doesn't score well. The scoring sheet has been updated to better reflect the priorities of the Township, as previously established, and may be revised in the future as priorities change.

The scoring takes place when members of the EAC physically walk throughout the entire property taking note of specific features detailed on the Bushkill Township Open Space Criteria Evaluation sheets. Upon completion of the site walkthrough, members collectively will score the property using the evaluation sheets. A copy of the Criteria Evaluation Score Sheet is provided in Appendix J.

6.3.4 Appraisal of the Property

Upon completion of the scoring process, the EAC may recommend an appraisal be obtained by the Township Board of Supervisors. All acquisitions in fee or partial interest will be subject to the Township obtaining a qualified appraisal justifying the acquisition price. The Township, prior to making an offer, will commission an appraisal. In situations where a second appraisal is required by funders, the property owner will be required to pay for the second appraisal. Often, both the landowner and the entity acquiring the easement will obtain their own appraisals. Only if the parties can reach an agreement on price does the transaction go forward.

A "qualified appraisal" includes: a description of the property, information on the appraiser's qualifications, the valuation method used to determine fair market value, the restrictions to be placed on the property, and a description of the fee arrangement between the appraiser and the donor. (Treasury Regulation §1.170A-13T(c)(1).) The appraisal must be performed by an appraiser who is "qualified to make appraisals of the type of property being valued" and who is "independent" of the donor and the easement holder. Appraisals performed for projects using DCNR funds require that a state-certified general (not residential) real estate appraiser be hired.

6.3.5 Negotiation with the Property Owner

Upon receipt of the appraisal, the EAC may recommend presenting an offer to purchase a conservation easement and/or fee simple purchase of the property. The Township may only offer up to the qualified appraisal amount. In instances where property owners want to obtain their own appraisal, the Township will consider qualified appraisals prepared for the property owner as part of the process in making an offer to purchase.

Between the time the parties come to an agreement and the time they are ready to acquire the easement, the Township will perform its due diligence.

6.3.6 Due Diligence

The due-diligence period in a real estate contract is defined as a buyer's obligation to thoroughly investigate a property within a specified time to determine whether the buyer remains satisfied with the property before finalizing the purchase.

At a minimum, the Township will perform the following due diligence tasks:

- The Township will perform a title search and mortgage subordination prior to purchasing a conservation easement or property fee simple.
- A property survey, prepared by a Licensed Professional Land Surveyor, will be required, either as provided by the owner or as conducted by the Township.
- The Township will hire a qualified environmental consultant to perform a Phase I Environmental Site Assessment (ESA) for all fee simple purchases. The Township will be considered the "User" of the Phase I ESA.

A Phase I ESA is a non-intrusive (usually, no soil or groundwater samples are collected) assessment of the existing conditions, the historical use of the subject property, and the known sites of environmental concern in the vicinity of the subject property. The Phase I ESA generally includes a walkover to assess the current conditions, a review of various historical sources, a search of government databases of sites of known environmental concern, and interviews with various local and state government agency personnel. If sites of known environmental concern are identified in the vicinity of the subject property, a review of available environmental records for the identified sites may be appropriate.

Generally, under the federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), purchasers and lessees of environmentally contaminated properties were historically jointly and severally liable for the contamination associated with the property unless they performed “all appropriate inquiry (AAI) into the previous ownership and uses of the property consistent with good commercial or customary practice” and had no reason to suspect the property was contaminated. The purpose of the Phase I ESA is to meet the “all appropriate inquiry” requirement to qualify for CERCLA liability protection. Any property purchasers seeking the CERCLA liability protection must conduct AAI prior to taking title in order to raise a defense as any of the following: innocent landowner; contiguous property owner; or bona fide prospective purchaser.

Congress’ Statutory Language for Mandatory Components of “All Appropriate Inquiry”

- The results of an inquiry by an environmental professional.
- Interviews with past and present owners, operators, and occupants of the facility for the purpose of gathering information regarding the potential for contamination at the facility.
- Reviews of historical sources, such as chain of title documents, aerial photographs, building department records and land use records, to determine previous uses and occupancy of the real property since the property was first developed.
- Searches for recorded environmental cleanup liens against the facility that are filed under federal, state or local law.
- Reviews of federal, state and local government records, waste disposal records, underground storage tank records, and hazardous waste handling, generation, treatment, disposal and spill records concerning contamination at or near the facility.
- Visual inspections of the facility and of adjoining properties.
- Specialized knowledge or experience on the part of the defendant.
- The relationship of the purchase price to the value of the property, if the property was not contaminated.
- Commonly known or reasonably ascertainable information about the property.
- The degree of obviousness of the presence or likely presence of contamination at the property, and the ability to detect the contamination by appropriate investigation.

If the Township’s investigation uncovers defects with the property, the Township may either propose a solution to the seller with an addendum to the real estate contract or cancel the purchase.

6.3.7 Establishment of Property Baseline Documentation

The Township shall perform an analysis to document the property’s conservation values. This is an IRS requirement for landowners who intend to take a charitable tax deduction and a way for easement holders to conduct meaningful inspections in the future. The report – called “baseline

documentation” – describes the condition of the property at the time the conservation easement is placed upon it and identifies the property’s important resources and any threats to those resources. This analysis typically is conducted at the same time the easement document is being drafted, so that restrictions and reserved rights can be tailored to protect the property’s most important natural features.

The baseline documentation may include:

- a list of flora and fauna of interest;
- signed and numbered photographs of the property with photo points keyed to a map;
- topographic and soil maps; aerial photographs;
- a survey;
- a conservation plan illustrating agreed-upon building envelopes; and
- a management plan for the property’s natural resources.

The Applicant will be required to sign the baseline documentation report to accept its accuracy in documenting site conditions and its conservation values that are to be protected.

A copy of the Baseline Evaluation Form is provided in Appendix K.

6.3.8 Receipt of Easement or Acquisition

Upon reaching an agreement in price for the conservation easement and or fee simple purchase, legal counsel for both the property owner and the Township will prepare the necessary documents. A real estate closing will be scheduled once all the conditions of the sales agreement have been satisfied. The title company or buyer’s attorney generally handles the closing, ensuring that the grantor receives the agreed-upon compensation and the grantee receives the conservation easement or full interest if a fee simple purchase. If the conservation easement is being donated, a formal closing is unnecessary.

After the grantor and the grantee have signed the conservation easement, the document must be recorded at the office of the local recorder of deeds. This provides notice to future owners about the conservation easement’s restrictions at the time they obtain title reports.

To coordinate local land protection efforts, municipalities may want to ask land trusts to notify them when the land trust accepts a conservation easement within the municipality.

6.4 Annual Review of Eased Properties to Ensure Continuing Conservation

As conservation easement holder, the municipality or land trust takes on the perpetual burden of monitoring the conservation easement to ensure that its terms are followed. The holder needs to visit the property on a regular basis, maintain adequate records, respond to landowners’ questions and requests for approvals, document any changes in the condition of the property, and issue written interpretations of conservation easement restrictions when necessary.

Periodic visits to the property reminds landowners that they are (legally) committed to observe the conservation easement terms and introduces the conservation easement holder to any new owners. Monitoring visits typically are conducted annually, but there may be special occasions that necessitate inspections, such as when vandalism is suspected or after severe weather conditions. The conservation easement agreement should be written to give the holder the power to inspect the property at any reasonable time with advanced notice.

The purpose of the inspection is not to find violations and penalize the landowner; most violations are done innocently. The real purpose is to clear up any misunderstandings early, before landowners make major changes in land uses or conditions, and before they incur large costs in making these changes. Just as importantly, these inspection sessions give the conservation easement holder a chance to air any concerns it may have. Again, the more time taken to clearly spell out details prior to putting the conservation easement in force, the fewer the number of problems that will arise later. A copy of the Annual Monitoring Form is provided in Appendix L.

Appendix A

State Laws and Regulations

List of State Laws and Regulations

- 1. THE GENERAL ASSEMBLY OF PENNSYLVANIA – House Bill No. 87 – Session of 2005**
- 2. THE GENERAL ASSEMBLY OF PENNSYLVANIA – House Bill No. 1523 – Session of 2013**
- 3. THE GENERAL ASSEMBLY OF PENNSYLVANIA – Senate Bill No. 1320 – Session of 1995**
- 4. MUNICIPALITIES GENERALLY (53 PA.C.S.) - OMNIBUS AMENDMENTS – Act of Dec. 19, 1996, P.L. 1158, No. 177 – SUBCHAPTER B – ENVIRONMENTAL ADVISORY COUNCILS**
- 5. THE GENERAL ASSEMBLY OF PENNSYLVANIA – Senate Bill No. 689 – Session of 1995**
- 6. PRESERVING LAND FOR OPEN AIR SPACES – Act of Jan. 19, (1968) 1967, P.L. 992, No. 442**

Appendix B

Official Map




Bushkill Township

Northampton County, Pennsylvania


OFFICIAL MAP

Sheet 1 of 2

Existing Features

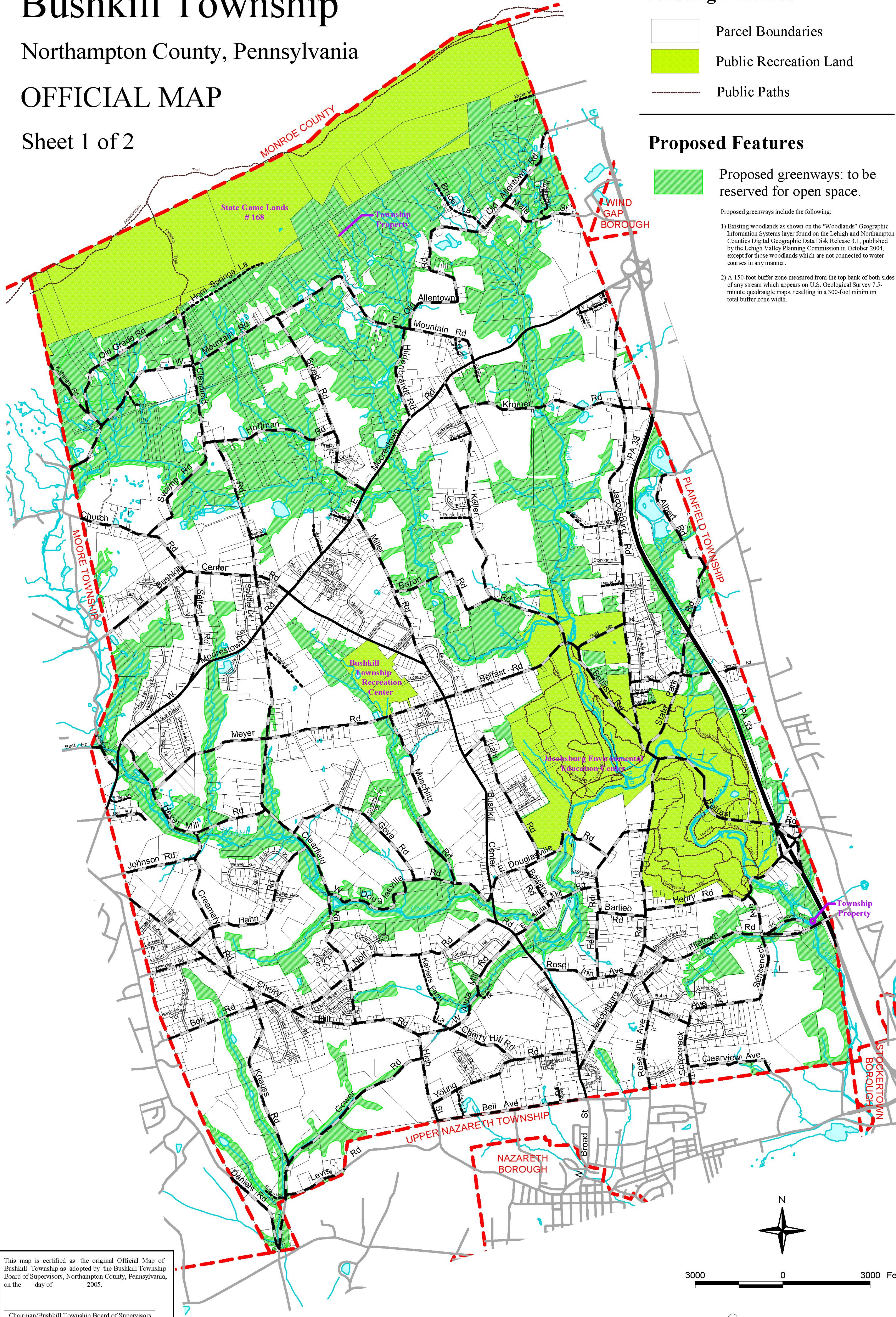
-  Parcel Boundaries
-  Public Recreation Land
-  Public Paths

Proposed Features

-  Proposed greenways: to be reserved for open space.

Proposed greenways include the following:

- 1) Existing woodlands as shown on the "Woodlands" Geographic Information Systems layer found on the Lehigh and Northampton Counties Digital Geographic Data Disk Release 3.1, published by the Lehigh Valley Planning Commission in October 2004, except for those woodlands which are not connected to water courses in any manner.
- 2) A 150-foot buffer zone measured from the top bank of both sides of any stream which appears on U.S. Geological Survey 7.5-minute quadrangle maps, resulting in a 300-foot minimum total buffer zone width.



This map is certified as the original Official Map of Bushkill Township as adopted by the Bushkill Township Board of Supervisors, Northampton County, Pennsylvania, on the ___ day of _____, 2005.

Chairman/Bushkill Township Board of Supervisors

Secretary/Bushkill Township

Base map data: Lehigh Valley Planning Commission, F.X. Browne, Inc., Pennsylvania State University, and URDC, 2003.

Planning Consultants - Cartographers - Landscape Architects
Urban Research & Development Corporation
 URDC
 28 West Road Street - Bethlehem, Pennsylvania 18018 - 610-865-0701

Appendix C

Mortgage Subordination Factsheet

Mortgage Subordination Fact Sheet

Accepting an easement on property subject to an existing mortgage presents unique obstacles. If the lending institution ever forecloses on the mortgage and takes title to the property, the conservation easement may be at risk of being extinguished. A solution to this problem is to have the lender subordinate its rights in the property to the rights of the easement holder. In the event of a foreclosure, the conservation easement will not be extinguished. Bushkill Township will not accept an easement on a mortgaged property unless the holder of the mortgage agrees to subordinate.

What is mortgage subordination? When a mortgage holder subordinates a mortgage to a conservation easement essentially they agree to allow the easement to be first in the chain of title. Should the property be foreclosed on, the integrity of the easement remains intact rather than being extinguished. In determining interests in a specific parcel of land, the general legal rule is “first in time, first in right.” When a mortgage is recorded prior to a conservation easement being recorded, the interests of the lender will be given priority over the interest of the easement holder in the event of foreclosure. As a result, the conservation easement will be extinguished and the lender will take title to the land free and clear of the easement encumbrance. The lender’s “first in time” priority interest may be altered by a contractual agreement called mortgage subordination. In the Mortgage Subordination agreement, the lender consents to subordinate its mortgage to the conservation easement, even though the mortgage was recorded prior to the conservation easement on the parcel. Should a foreclosure occur in this case, the lender would take title subject to the easement, thereby giving the easement holder the continued legal right to monitor, enforce and defend the conservation easement.

Why is mortgage subordination necessary? Mortgage subordination prevents problems associated with foreclosure. Mortgage subordination also is a requirement in order for the donor of a conservation easement to receive a charitable deduction for their donation. Donors attempting to claim any federal income, gift, or estate tax benefits must have mortgage subordination as required by the Internal Revenue Service.

Challenges Associated with Mortgage Subordination? In many cases, large lending institutions have no legal or financial incentive to relinquish their position and allow the conservation easement to take priority over the mortgage. Lenders are conservative in nature and believe that the safest position is to safeguard their existing rank in the title and to take the property free and clear of all other encumbrances in the event of a foreclosure. While not easy or quick to obtain, careful preparation that addresses the concerns of the mortgage holder can expedite the process and increase the chance of making subordination successful. When dealing with the lending institutions, below are some suggestions to make the subordination process go smoothly:

- Explain the purpose of the conservation easement to the lender and describe how it benefits the community at large.
- Explain to the lender the IRS requirements for deductibility and why mortgage subordination is essential for a donor and Bushkill Township.

- The lender needs to be aware that the easement restricted property continues to have a value in excess of its outstanding mortgage and that the permitted uses of the property will not unduly limit marketability of the property should the lender have to foreclose.
- Be prepared to negotiate and address the lender's concerns contractually.
- Spend time building relationships with local lenders prior to the need for a subordination agreement. Even utilizing the above approach, a lender may simply refuse to agree to mortgage subordination. In that event it may be necessary to seek refinancing with an agreeable lender or the landowner may need to pay down or pay off the existing principal on the loan.

Below is a sample mortgage subordination which can be provided to the lending institution as a template. The sample Mortgage Subordination document below has been reproduced with acknowledgement of ConservationTools.org and the Pennsylvania Land Trust Association.

Prepared by:

Name:

Address:

Telephone:

Return to:

Name:

Address:

Tax Parcel(s):

Mortgage Subordination

Subordination Date:

Mortgage Holder:

Mortgage Information:

Loan #:

Date of Mortgage:

Date of Recording:

Book:

Page:

Instrument #:

Mortgaged Property:

Street Address:

Municipality:

Parcel Identifier:

County:

State: Pennsylvania

Owners:

Conservation Easement Holder:

Address for Notices:

INTENDING TO BE LEGALLY BOUND, the Mortgage Holder identified above covenants and agrees as follows for the benefit of the Owners identified above and the Conservation Easement Holder identified above.

1. Consent

Mortgage Holder consents to the further encumbrance of the Mortgaged Property identified above by a conservation easement (the "Conservation Easement") in favor of Conservation Easement Holder ("CE Holder").

2. Sale Subject to Conservation Easement

Mortgage Holder confirms and agrees that the Conservation Easement shall survive any sale or other execution upon the Mortgage. The term "Mortgage" when used in this Mortgage Subordination includes all documents and instruments secured by the Mortgage. No sale of the Mortgaged Property by Mortgage Holder, or by, through or under the powers vested in Mortgage Holder pursuant to the Mortgage, shall occur except under and subject to the Conservation Easement. This covenant applies not only to a sheriff's sale or other judicial sale of the Mortgaged Property on account of a default or other violation of the Mortgage but also to any sale that directly or indirectly benefits the Mortgage Holder as a creditor of Owners or a secured creditor with respect to the Mortgaged Property. In furtherance of, but without limiting, this covenant, Mortgage Holder agrees as follows:

- (a) CE Holder must not be named as an interest to be divested in any such sale.
- (b) Any such sale must be advertised as being held under and subject to the Conservation Easement.
- (c) CE Holder has the right to post signage on the Mortgaged Property or otherwise inform the public that any sale or other transfer of the Mortgaged Property is under and subject to the Conservation Easement.
- (d) CE Holder has the right to stay any sale advertised or scheduled in violation of the terms of this Mortgage Subordination and the right to obtain injunctive relief to protect its interest in the survival of the Conservation Easement in the event of any such sale, the loss of which is not compensable by damages.

3. Proportionate Value

Mortgage Holder acknowledges that the Conservation Easement vests in CE Holder the right to receive the Proportionate Value of any proceeds of condemnation or other event terminating or extinguishing the Conservation Easement upon all or any part of the Mortgaged Property (a "taking"). The Proportionate Value is the ratio, expressed as a percentage, of the value of the Conservation Easement as established by appraisal compared to the value of the Mortgaged Property as if it were not eased. Notwithstanding anything to the contrary contained in the Mortgage, Mortgage Holder agrees that proceeds of a taking, to the extent attributable to land only and not improvements, (net of costs of collection) shall be divided as and when received so that CE Holder receives the Proportionate Value and Mortgage Holder (or Owners, as the case may be) receives the balance.

4. Subordination

This Mortgage Subordination is intended to constitute the subordination of the Mortgage, and be interpreted as such, for purposes of qualifying the Conservation Easement as a Qualified Conservation Contribution under the Internal Revenue Code and applicable regulations.

5. Notices

Mortgage Holder agrees to use commercially reasonable efforts to notify CE Holder, at its address for notices identified above, of its intent to foreclose or otherwise sell or transfer the Mortgaged Property.

6. Binding Effect

This Mortgage Subordination is both a contract and a covenant running with the land. Mortgage Holder agrees that this Mortgage Subordination is binding upon Mortgage Holder and its successors and assigns as owner of the Mortgaged Property or holder of any interest therein by, through, or under Mortgage Holder. This includes any persons who at any time may own, or hold an interest in, the Mortgaged Property by, through or under Mortgage Holder including any sale held on account of the Mortgage or the interest of Mortgage Holder as a secured creditor with respect to the Mortgaged Property.

7. Consideration

Mortgage Holder confirms that it has received legally sufficient consideration for this Mortgage Subordination and understands that Owners and CE Holder are relying upon this Mortgage Subordination in granting and accepting the Conservation Easement.

INTENDING TO BE LEGALLY BOUND, Mortgage Holder has signed and delivered this Mortgage Subordination as of the date of execution of the Conservation Easement.

Witness/Attest: _____

Print Name: _____

Print Title: _____

The model on which this document is based should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. It should be revised under the guidance of legal counsel to reflect the specific situation.

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 _____, 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:



Bushkill Township

Board of Supervisors

Brien Kocher, Chairman
Jason Smith, Vice-chairman
Julianne Bender
Carolyn Hill
Harrison Kline

Brian Harris, Secretary-Treasurer/Manager

[DATE]

Dear Lender:

You may be asked by a borrower on whose property you hold a mortgage or deed of trust to grant your consent, and to subordinate your lien, to the donation or purchase of a “conservation easement” which the borrower wishes to place on the property. This information sheet seeks to give you a brief background to help you respond to such a request.

Public Participation in the Development of the Open Space Plan

During the November 8, 2005 municipal election, Bushkill Township residents were asked to vote via referendum whether the township should impose an additional Earned Income Tax at the rate of 0.25% on an annual basis to purchase land or interests in land for preservation and conservation of open, undeveloped land in Bushkill Township. The Township would use the money to do one (1) or more of the following:

1. Acquire agricultural conservation easements. The Township could purchase agricultural conservation easements, or participate in State or County land preservation programs that acquire agricultural conservation easements. An agricultural conservation easement allows the landowner to retain his/her land and use it for farming and other agricultural purposes.
2. Finance the acquisition of open space. The Township could purchase undeveloped land from landowners in the Township in order to protect sensitive natural areas such as woodlands, stream valleys or other unique natural resources or habitats.
3. Acquire property development rights. Under this option, a landowner would sell the development rights of a property to the Township. The landowner would retain the property, but the property could not be developed.

As the referendum was passed, two public meetings were held to gather community input into the planning process. The following four (4) open space goals were prioritized by the community:

Farmland Preservation

The overwhelming consensus of participants was that preserving farmland was a first priority to preserve open space, helping to maintain adequate groundwater recharge and assuring the future of agricultural activities in the Township.

Watershed Protection

The best way to protect drinking water supplies and surface water quality is to protect the lands that surround our reservoirs, streams and aquifer recharge areas. At present, there are no State or Federal laws or regulations which will permanently protect watershed or recharge lands from development. The destruction of wetlands and impingement on floodplains, which provide natural filtration of stormwater run-off, further degrades our natural resources and water quality. Unless the lands that provide groundwater recharge or that surround water supplies are permanently protected, the natural resources and water quality will be degraded by development.

Focusing on the purchase of conservation easements, in addition to protection through regulation, resonated very strongly at the first public meeting and was discussed in greater detail during the second public meeting.

Greenway Corridors

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.

The Bushkill Township Official Map specifically identifies greenways to be reserved for open space. The establishment of greenways, particularly as methods to preserve Bushkill Creek and Sobers Run, was seen as a high priority. Since many of the riparian corridors can function as greenway corridors and since Bushkill Township's streams rate highly on the County's open space and natural features mapping, coordination with the County open space preservation program is a sound objective. The public felt the value of having greenways was essential.

Viewsheds

The value of open space to the community at large is often visual. Preservation of scenic views was an important issue for the public. The conservation of highly visible lands, such as along Blue Mountain and well-traveled public roads, will result in a greater appreciation of the beauty of the community.

What is a Conservation Easement

A conservation easement is a voluntary legal agreement that limits future development by transferring certain rights from the landowner to a governmental entity and/or a nonprofit organization for conservation purposes. Conservation easements permanently restrict development while allowing property to remain in private ownership. Each agreement is tailored to protect the unique resources of the particular property and remains with the land forever. By purchasing easements, Bushkill Township can help landowners retain private ownership of their land, while protecting important farmland, environmentally sensitive areas, scenic resources and

[DATE]

Page -3-

greenway corridors. Easements enable the Township to accomplish its open space objectives without owning land, keeping land in private ownership and on tax rolls.

As noted above, the landowner continues to own the land conserved by an easement and retains many rights of use. An easement document might specify, for example, that the owner reserves the right to:

- engage in agricultural production;
- build barns, sheds, and other farm structures;
- use, maintain, and expand an existing residence;
- manage woodlands for timber production or conduct a Christmas tree operation; and/or
- subdivide the land and construct one or more additional residences in agreed-upon areas or “building envelopes”

Foreclosure of a pre-existing lien (e.g., mortgage, tax lien) on the property will extinguish the easement restrictions. Therefore, a subordination agreement needs to be obtained from the mortgage holder so that a later foreclosure will not terminate the easement.

As a “good corporate citizen” and in almost every case in Bushkill Township, the lender has been willing to subordinate the loan to the easement.

Our preservation program has enjoyed and relies on the continued support of the lender community. If you have questions or concerns when approached by a borrower who wishes place a conservation easement on their property, we encourage you to give me a call at 610-759-1250, extension 210.

Sincerely,

Brian D. Harris, Bushkill Township Manager

Appendix D

Conservation Easement Deed Language

UPI: _____

**CONSERVATION EASEMENT
AND DECLARATION OF RESTRICTIVE COVENANTS**

THIS GRANT OF CONSERVATION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (“Easement:”) is made this ____ day of _____, 20____, by and between _____, of _____ (“Grantor”), in favor of **BUSHKILL TOWNSHIP**, with offices at 1114 Bushkill Center Road, Nazareth, PA 18064 (the “Grantee”).

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property in Northampton County, Pennsylvania, containing ____ acres, more or less, hereinafter called the “Property”, which is comprised of the following: Northampton County Tax Parcel No. _____ (herein, the “Tax Parcel”), more particularly described in the Office for the Recording of Deeds in and for Northampton County in Deed Book Volume _____, Page _____, located on _____, Bushkill Township; and

WHEREAS, the portion of the Property which shall be subject to this Easement, contains ____ acres, more or less, is hereinafter called the “Easement Area” and is described in Exhibit “A” and depicted in Exhibit “B”; and

WHEREAS, a legal description of the subject premises excluding the Easement Area is attached hereto as Exhibit “C”; and

WHEREAS, the Easement Area is more particularly described in a legal description, attached hereto as Exhibit “A,” and shown on the Conservation Easement Plan, referred to as Conservation Easement Plan for _____, prepared by _____, dated _____ (the “Conservation Easement Plan”) attached hereto as Exhibit “B.” Exhibits “A” and “B” are attached hereto and incorporated herein by reference; and

WHEREAS, the Legislature of the Commonwealth of Pennsylvania authorizes the Commonwealth of Pennsylvania, counties, and municipalities thereof, to preserve, acquire, or hold land for open space uses, and to preserve land in open space uses, which specifically include farmland and scenic areas, and that actions pursuant to these purposes are for public health, safety, and general welfare of the citizens of the Commonwealth and for the promotion of sound land use by preserving suitable open space; and

WHEREAS, the Easement Area possesses significant agricultural, natural, scenic, and open space values (collectively, “Conservation Values”) of great importance to Grantor, Grantee, and the people of Northampton County, and the people of the Commonwealth of Pennsylvania; the preservation and conservation of which will yield significant public benefit; and

WHEREAS, Grantor desires and intends, as owner of the Property, to convey to Grantee, the right to preserve and protect the Conservation Values of the Easement Area in perpetuity; and

WHEREAS, Grantee is an incorporated municipality in the County of Northampton, Commonwealth of Pennsylvania, qualified under Pennsylvania law and the Internal Revenue Code, one of whose goals include the preservation and protection of land in its agricultural and open space condition; and

WHEREAS, the Grantee has agreed to hold and use the Easement Area hereinafter in accordance with the rules which govern the Bushkill Township Open Space Program; and

WHEREAS, Grantee agrees by accepting this Easement to honor the intentions of Grantor stated herein and to preserve and protect, in perpetuity, the Conservation Values of the Easement Area for the benefit of this generation and the generations to come; and

NOW THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and for the further consideration of the sum of _____ (\$_____) Dollar(s) lawful money of the United States of America, the receipt of which is hereby acknowledged, and pursuant to the laws of Pennsylvania, Grantor hereby voluntarily grants, agrees, declares and conveys to Grantee, a Conservation Easement in perpetuity over the Easement Area of the nature and character and to the extent hereinafter set forth (“Easement”).

1. STATEMENT OF GRANT

Grantor hereby voluntarily, unconditionally and absolutely grants and conveys unto Grantee, its successors and assigns, in perpetuity, an Easement and a Declaration of Restrictive Covenants over the Easement Area, as more particularly hereinafter set forth exclusively for the purposes of preserving and protecting the present agricultural, natural, scenic, and open space values of the Easement Area. Grantee hereby accepts the Easement and agrees to hold it exclusively for such purposes.

2. PURPOSE

The primary purposes of this Easement are to assure that the Easement Area will be retained forever in its agricultural and open space condition and to prevent any use of the Easement Area that will significantly impair or interfere with the Conservation Values of the Easement Area. This purpose is hereinafter referred to as the: “Conservation Purposes”. Grantor intends that this Easement will confine the use of the Easement Area to such activities including, without limitation, those involving farming and resource conservation, as are consistent with the Conservation Purposes of this Easement.

3. RIGHTS OF GRANTEE

A. To accomplish the Conservation Purposes of this Easement, the following rights, subject to the limitations stated herein and in Paragraph 10 below, are conveyed to Grantee and its successors and assigns:

- i.** To preserve and protect the Conservation Values of the Easement Area;
- ii.** To enter upon the Property at reasonable times in order to monitor Grantor’s compliance with and, if applicable, to otherwise enforce the terms of this Easement provided that such entry shall be upon prior reasonable notice to Grantor, and the Grantee shall not unreasonably interfere with Grantor’s use and quiet enjoyment of the Property; and
- iii.** To prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Easement Area that may be damaged by any inconsistent activity or use, pursuant to paragraph 9.

4. DEED RESTRICTIONS

Grantor declares, and covenants for himself, his heirs, successors and assigns, that the Easement Area described in this Easement shall be restricted as follows: on those areas designated as “Standard Protection Areas”, the permitted uses shall be restricted to agricultural, equestrian and directly associated uses as hereafter defined; on those areas designated as “Highest Protection Areas”, the permitted uses shall be restricted to open space and related activities as set forth below. However, more restrictive applicable state and local laws shall prevail in the determination of permitted uses of the Easement Area subject to these restrictions. .

A. On those portions of the Easement Area designated as “Standard Protection Areas”, the Easement Area shall be used solely for the production of crops, nursery stock, live stock and equestrian purposes, including but not limited to the following:

- i.** Production of field crops, including corn, wheat, oats, rye, barley, potatoes, soy beans;
- ii.** Production of fruits, including apples, peaches, grapes, cherries and berries;
- iii.** Production of vegetables, including tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms and common garden vegetables;
- iv.** Production of horticultural specialties, including nursery stock, ornamental shrubs, ornamental trees, and flowers;
- v.** Livestock and livestock products, including cattle, sheep, hogs, goats, horses, poultry, furbearing animals, milk, eggs and furs;
- vi.** Production of aquatic plants and animals and their by-products.
- vii.** Commercial equestrian purposes, including boarding of equine, training of equine, instruction of people in handling, driving or riding equines, use of equines for riding or driving purposes and pasturing of equines, some or all of where may involve the collection of fees for providing such services. **THE TERM “EQUESTRIAN PURPOSES” DOES NOT INCLUDE ACTIVITY LICENSED UNDER THE ACT OF DECEMBER 17, 1981 (P.L. 435, NO. 135), KNOWN AS THE “RACE HORSE INDUSTRY REFORM ACT.”**
- viii.** Recreational, non-commercial fishing and hunting as Grantors may permit, limited to Grantor’s invitees, and provided no compensation is paid for such privileges.
- ix.** If approved by Grantee after review, provided there is no adverse impact on Conservation Values, and if otherwise permitted under the zoning ordinance of Grantee then in effect, “agritainment” uses as such term is defined in the Act of December 19, 1974 (P.L. 973, No. 319) known as the Pennsylvania Farmland and Forest Land Assessment Act of 1974, as amended.
- x.** The following Agricultural Uses listed below are not permitted:

- (a) Intensive Agriculture. Including confinement, livestock and poultry operations taking place in structures or closed pens; animals raised for furs or skins; and plants raised in greenhouses, hoop houses or similar structures;
- (b) Industrial Animal Production. The raising, breeding, and/or lodging of animals normally used as domestic or household pets for immediate or ultimate use in laboratories, for experimental purposes, or for uses other than that of a domestic household pet; and
- (c) Commercial Kennels. An establishment, structure, lot or portion of a lot on or in which more than six (6) dogs, cats or domestic pets are housed, bred, boarded, trained or raised for sale.

Except as permitted in this Easement, neither Grantors nor their agents, heirs, executors, administrators, successors and assigns, nor any person, partnership corporation or other entity claiming title under or through Grantors, or their agents, shall suffer, permit, or perform any activity on the Standard Protection Areas other than agricultural production and/or equestrian purposes as hereinbefore described.

B. This Easement seeks to protect natural resources within those areas of the Easement Area designated as “Highest Protection Areas”, so as to keep them in an undisturbed state except as required to promote and maintain a diverse community of predominately native species. The following activities and uses are permitted within the Highest Protection Areas as designated on the Conservation Plan:

i. Removal of invasive species, to the extent reasonably necessary to remove or mitigate an unreasonable risk of harm to people, property or health of native species on or about the Easement Area.

ii. Planting a diversity of native species of trees, shrubs and herbaceous plant materials in accordance with Best Management Practices.

iii. Vehicular use in case of emergency and subject to applicable limitations, in connection with activities or uses permitted within the Highest Protection Areas.

iv. Removal of dead, downed or dangerous trees on the Property in accordance with best management practices for removal.

v. Removal of vegetation to accommodate replanting with a diversity of native species of trees, shrubs and herbaceous plant materials.

vi. Other resource management activities that Grantee determines are consistent with maintenance or payment of conservation values under this Easement.

vii. Sustainable forestry uses in accordance with a Forest Management Plan as approved by Grantee. Forestry conducted in compliance with a Forest Management Plan or otherwise approved by Grantee is in addition to cutting of dead and downed trees as permitted above. However, no clear cutting shall be permitted.

viii. Recreational and educational activities that do not require the construction of any improvements and do not materially and adversely affect maintenance or attainment of conservation purposes such as the following:

- (a) Walking, horseback riding on trails, bird watching, nature study.

C. The construction or use of any building or other structure in the Easement Area other than as existing on the date of the delivery of this Easement is prohibited except for the following:

- xi.** The erection of high tensile agricultural fencing or split rail fencing for agricultural production and protection of watercourses such as lakes, streams, springs, and reservoirs is permitted.
- xii.** The construction and erection of small structures to enhance and promote wildlife habitat, such as, but not limited to, birdhouses and bee hives, is permitted.

D. No construction, demolition, reconstruction, expansion, exterior alteration, installation or erection of temporary or permanent structures or facilities of any kind may occur within the Easement Area unless otherwise permitted by this Easement. Construction of such facilities related to the reception, storage, or transmission of sewage generated by on-site improvements, existing or otherwise, and located on the Property, is not permitted on or within the Easement Area. Facilities such as telecommunications cell towers, commercial satellite dish antennae, or fuel storage tanks not directly related to the operation and maintenance of Grantor's or subsequent owner's farm equipment is strictly prohibited.

E. No industrial activities shall be conducted or permitted in the Easement Area.

F. No quarrying, excavation, or removal of rocks, minerals, gravel, sand, topsoil or other similar materials from the Easement Area shall occur. The granting of leases, assignments, or other conveyances or the issuing of permits, licenses, or other authorization for the exploration, development, storage or removal of coal, rock, or other minerals and gasses by any mining method is not permitted. The following notice is given to and accepted by Grantor for the purpose and with the intention of compliance with the requirements of the Pennsylvania Conservation and Preservation Easements Act. Nothing herein shall imply the presence or absence of workable coal seams or the severance of coal interests from the Property.

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

F. No cutting or removal is permitted in the Easement Area of any plants that are identified in the *Plants of Special Concern in Pennsylvania* as maintained by the Pennsylvania Natural Diversity Inventory (PNDI), or the *Natural Areas Inventory of Northampton County*.

G. No depositing, dumping, or abandoning of any solid waste, hazardous waste, liquid wastes, or chemical substances on or in the Easement Area, except in connection with permitted activities. The disposal or piping of sanitary facility effluent generated off the Easement Area is not permitted on or across the Easement Area. Hazardous waste shall be considered any substance now or hereafter defined, listed or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting, or contaminating to the air, water or soils.

H. No mining or removal of groundwater from the Easement Area shall occur, except as may be required for residential uses permitted therein.

I. The Grantee shall be permitted to erect on the Easement Area, at their sole cost and expense, subject to the Grantee's sign ordinances, signs that may customarily be used to identify lands permanently preserved by Bushkill Township. Such signage shall not exceed twenty square feet (20 s.f.) on a side and shall be suitable for the agricultural, scenic, and residential character of the Easement Area.

J. Maintenance or replacement of existing septic system improvements within the Easement Area are permitted subject to review and approval by the Grantee, and provided all County and State regulations are complied with as long as such improvements do not significantly impact the natural, open space and scenic resources of the Easement Area.

5. INTENTIONALLY DELETED

6. DENSITY LIMITATIONS

The Easement Area and any portion thereof shall not be included as part of the gross area of other property not subject to this Easement for the purposes of determining density, lot coverage, or open space requirements under otherwise applicable laws, regulations or ordinances controlling land use and building density. No development rights which have been encumbered or extinguished by this Easement shall be transferred to any other lands pursuant to a transferable development rights scheme or cluster development arrangement or otherwise; provided, however, that with prior written permission of the Grantee, this paragraph shall not preclude such transfer of development rights resulting from the destruction or demolition of any existing residential building on the Property.

7. NOTICE, APPROVAL AND DISCRETIONARY CONSENT

In order to monitor compliance with the Conservation Purposes, Grantor shall notify (hereinafter "Grantor's Notice") Grantee in writing, no less than sixty (60) days prior to undertaking any activities either permitted or prohibited under paragraph 4 but deemed desirable due to unforeseen or changes circumstances. Grantor's Notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to enable Grantee to make informed judgments as to its consistency with the Conservation Purposes of this Easement. Grantee may give its permission only if it determines that such activities: (1) do not violate the Conservation Purposes of this Easement; and (2) either enhance or do not impair any significant conservation interests associated with the Easement Area; Grantee's approval or disapproval must be in writing and given to Grantor within sixty (60) days of receipt of Grantor's Notice. In no event, however, shall Grantee agree to any activities that would result in the termination of this Easement or the development of any residential, commercial or industrial structures not provided for herein.

8. SUBDIVISION OF PROPERTY

No subdivision of the Property may take place except as approved by the Board of Supervisors of Bushkill Township.

9. GRANTEE'S REMEDIES

A. Notice of Violation; Corrective Action. If Grantee determines that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantee shall give written notice to Grantor of such violation and demand that Grantor undertake corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Area resulting from any use or activity inconsistent with the Conservation Purposes of this easement, to restore the portion of the Easement Area so injured.

B. Injunctive Relief. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from Grantee or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of

the terms of this Easement or injury to any Conservation Values protected by this easement including damages for the loss of Conservation Values and to require the restoration of the Easement Area to the condition that existed prior to any such injury.

C. Damages. Without limiting Grantor's liability therefor, Grantee, in its sole discretion, may apply damages recovered to the cost of undertaking any corrective action on the Easement Area.

D. Emergency Enforcement. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damages to the Conservation Values of the Easement Area, Grantee may pursue its remedies under this Paragraph 9 without prior notice to Grantor or without waiting for the period provided for cure to expire.

E. Scope of Relief. Grantee's rights under this Paragraph 9 apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantor agrees that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

F. Costs of Enforcement. Any costs incurred by Grantee in enforcing the terms of this Easement against Grantor, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be borne by Grantor. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit including, without limitation, attorneys' fees, shall be borne by Grantee.

G. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by the Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

H. Waiver of Certain Defenses. Grantor hereby waives any defense of laches, estoppel, or prescription.

I. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Easement Area resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Easement Area resulting from such causes.

10. GRANTOR'S OBLIGATIONS

A. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Easement Area, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

B. Taxes. The Grantor's agree to pay any real estate taxes or other assessments levied on the Property. If the Grantor becomes delinquent in payment of said taxes or assessments, such that a lien created against the Property is to be executed upon, Grantee; at their option, shall, after written notice to the Grantor, have the right to purchase and acquire the Grantor's interest in the Property by paying funds to discharge said lien or delinquent taxes or assessments, or to take such other actions as may be necessary to protect the Grantee's interest in the Property and to assure the continued enforceability of this Easement.

C. Environmental Compliance. Grantor represents and warrants that, after reasonable investigation and to the best of Grantor's knowledge that there is no substance defined, listed, or otherwise classified pursuant to any federal, state, local law, regulation, or requirement as hazardous, toxic, polluting, or otherwise contaminating to the air, water, or soil, or in any way harmful or threatening to human health or the environment, other than licensed agricultural chemicals, exists or has been released, generated, treated, stored, used, disposed of, deposited, abandoned, or transported in, on, or from or across the Property.

D. Hold Harmless. Grantor hereby releases and agrees to hold harmless, indemnify, and defend Grantee, and their respective members, directors, officers, employees, agents, and contractors and the heirs, personal representatives, successors, and assigns of each (collectively "Indemnified Parties") from and against all liability, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgements, including, without limitation, reasonable attorneys' fees, arising from or in any way connected with: (1) injury to or the death of any person, physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the violation or alleged violation of, or other failure to comply with, any state, federal, or local law, regulation, or requirement, including, without limitation, CERCLA, (or successor toxic waste or hazardous substance laws or regulations) by any person other than any of the Indemnified Parties, in any way affecting, involving, or relating to the Property; (3) the obligations specified in paragraphs 10(A) and 10(B); and (4) the existence or administration of this Easement.

11. EXTINGUISHMENT, CONDEMNATION, AND PROCEEDS

A. Extinguishment. If circumstances arise in the future such as to render the Conservation Purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a Court of competent jurisdiction. The amount of the proceeds to which Grantee may be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by Pennsylvania law at the time, in accordance with paragraph 11(C). Grantee shall use all such proceeds in a manner consistent with Conservation Purposes. Grantee and any successors in interests, shall exhaust all legal remedies in order to preserve and protect the Conservation Purposes of this Easement. Grantor shall cooperate with Grantee in Grantee's performance of its obligations under this paragraph 11(A).

B. Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law. Grantee may share in such compensation, per the formula set forth in Paragraph 11(C), if Grantee made an acquisitional cash investment in the Easement Area condemned.

12. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantee are free to amend this Easement; provided that the amendment is

approved by Grantee and no amendment shall be allowed that will affect the qualification of this Easement or the status of Grantee under any applicable laws. Any amendment shall be consistent with the Conservation Purposes of this Easement, and shall not affect its perpetual duration. Any such amendment shall be recorded in the official records of Northampton County, Pennsylvania.

13. ASSIGNMENT OF GRANTEE'S INTEREST

This Easement is transferable, but Grantee may assign its rights and obligations under this Easement only to an organization or government entity that is able to enforce the restrictions contained herein. First right of refusal shall be given to the Grantee. If assigned to a private organization, such an organization must at the time of transfer be a qualified organization under Section 170(h)(3) of the Internal Revenue Code and one which is organized and operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) of the Internal Revenue Code. Grantee shall require that the Conservation Values this Easement is intended to preserve will be protected and any necessary management and monitoring activities will be carried out by transferee.

14. SUBSEQUENT TRANSFERS

Grantor agrees to incorporate the terms of this Easement in any deed or other legal instrument by which he divests himself of any interest in all or a portion of the Property, including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least thirty (30) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

15. MAINTENANCE AND ASSESSMENT OBLIGATIONS OF GRANTEE

Grantee shall be under no obligation to maintain the Property or any portion thereof, or pay taxes or assessments thereon. Any action by Grantee such as maintenance of the Easement or any other act by Grantee to protect the Property shall be deemed merely a gratuitous act which shall create no obligation on the part of Grantee.

16. STATEMENT OF COMPLIANCE

Grantor hereby agrees to request in writing at least thirty (30) days prior to the sale, transfer, or long term (ten years or more) lease of the Property, or any portion thereof, a written instrument from Grantee stating that Grantor is in compliance with the terms and conditions of this Easement, or if Grantor is not in compliance with the terms and conditions of this Easement, stating what violations of this Easement exist. Grantee agrees in such cases or at any other time to acknowledge, execute, and deliver to Grantor and any mortgagee, transferee, purchaser, or lessee such a written instrument concerning compliance within thirty (30) days of written request from Grantor. Grantor shall provide a copy of Grantee's compliance statement to any purchaser, mortgagee, lessee, or assignee. Any costs incurred by Grantee in determining compliance and advising Grantor as to compliance or costs incurred as a result of Grantor's failure to notify Grantee of transfer, sale assignment, or lease of the Property, or any portion thereof, shall be paid by Grantor, his heirs and/or assigns.

17. NOTICES

All notices, requests, consents, approvals, or other communication hereunder shall be in writing and shall be deemed properly given if sent by U.S. certified mail, return receipt requested, addressed to the appropriate party or successor in interest at the address most recently provided or to such other address as either party from time to time shall designate by written notice to the other.

To Grantor:

To Grantee: **Bushkill Township**
 1114 Bushkill Center Road
 Nazareth, PA 18064

18. RECORDATION

Grantee shall record this instrument in a timely fashion in the official records of Northampton County, Pennsylvania and may re-record it at any time as may be required to preserve its rights in this Easement.

19. INTENTIONALLY DELETED

20. DURATION OF EASEMENT

The conservation easement created by this Easement shall be a covenant running with the land and shall be effective in perpetuity. Every provision of this Easement applicable to Grantor shall apply to Grantor's heirs, executors, administrators, successors, assigns, agents, and any person, partnership, corporation or other entity claiming title under or through Grantor.

21. GENERAL PROVISIONS

A. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Pennsylvania.

B. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the Conservation Purposes of this Easement and the policy and purpose of the Land Development Act, Pa. Stat. Ann. Title 32, Section 5001 et seq. If any provision in this instrument is found to be ambiguous, and interpretation consistent with the Conservation Purposes of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

C. Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

D. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alternation or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 12.

E. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

F. Joint Obligation. The obligations imposed by this Easement upon Grantor shall be joint and several.

G. Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

H. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

I. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

J. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee and its respective successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

Witness:

GRANTOR:

Attest:

GRANTEE:
BUSHKILL TOWNSHIP

BRIAN HARRIS, Secretary

By: _____
BRIEN KOCHER, Chairman

ACKNOWLEDGMENTS

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF _____ :

On this, the _____ day of _____, 20____, before me a Notary Public, the undersigned officer, personally appeared _____, known

to me (or satisfactorily proven) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and Notarial Seal.

_____(SEAL)
Notary Public

COMMONWEALTH OF PENNSYLVANIA :
: ss.
COUNTY OF NORTHAMPTON :

On this, the _____ day of _____, 20____, before me a Notary Public, the undersigned officer, personally appeared BRIEN KOCHER, who acknowledged himself to be the Chairman of the Board of Supervisors of BUSHKILL TOWNSHIP, Northampton County, Pennsylvania, and that he as such officer, being authorized to do so executed the foregoing instrument for the purposes therein contained.

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

_____(SEAL)
Notary Public

EXHIBIT "A"

DESCRIPTION OF CONSERVATION EASEMENT AREA

EXHIBIT "B"

CONSERVATION EASEMENT PLAN

EXHIBIT "C"

PROPERTY AREA EXCLUDING CONSERVATION EASEMENT AREA

Appendix E

Long-Term Acquisition Form

Property Information

Date _____

Property Name _____

Property Address _____

Parcel ID _____

Purchase Price _____

Total Acreage _____

Appraisal Company _____

Appraisal Date _____

Appraisal Price (total) _____

Appraisal Price (per acre) _____

Reason(s) for long-term acquisition:

Public Access and Recreation. Township ownership is most appropriate for properties within the municipal park system that may include trails, stream access, hunting and other recreational amenities. For example, the Township may purchase a privately owned property to create a trail and allow public

- Trails
- Stream/Pond/Lake Access
- Fishing
- Hunting
- Other Recreational Activiites

Flexibility in Use. Fee simple ownership enables the Township to use the preserved land for a range of appropriate open space purposes. For example, the Township may alternate use of land from year to year as passive recreation, community gardening, sustainable timber harvesting, and/or lease to a

Proposed Flexible Use:

Funding Options. In addition to dedicated open space funds authorized by Act 153, the Township can use different revenue sources to purchase land, including general funds, user fees, and bond issues.

Proposed Additional Revenue Source(s):

Maximum Control and Management. The Township may be the most appropriate owner of land that features highly sensitive natural resources and wildlife that require long-term, active stewardship. In addition to resource management, the Township can provide monitoring and enforcement to ensure

- Parkland
- Passive Open Space
- Greenway Connection
- Groundwater Protection
- Surface Water Protection
- Other

Long-term management and financial obligations (Cite whether costs are annual or up-front total)

- \$ _____ mowing
- \$ _____ stream/pond/lake maintenance
- \$ _____ roadway/parking maintenance
- \$ _____ trail construction
- \$ _____ trail maintenance
- \$ _____ other

Appendix F

Short-Term Acquisition Form

Property Information

Date _____

Property Name _____

Property Address _____

Parcel ID _____

Purchase Price _____

Total Acreage _____

Purchase Price (per acre) _____

Appraisal Company _____

Appraisal Date _____

Appraisal Price (total) _____

Appraisal Price (per acre) _____

Road Frontage (feet) _____

Reason(s) for short-term acquisition:

- Property owner requests life-rights to occupy the property but requires financial relief at present time

Provide full details here:

- Property owner has developer interest/offer but would rather see the property conserved

Provide full details here:

- Property is owned by an estate looking to liquidate asset

Provide full details here:

- Sheriff Sale by County

Provide full details here:

- Bank Owned - Foreclosure

Provide full details here:

Condition of Property

Are there structures/buildings on the property?

What are the conditions of the structures?

Are the structures an asset or do they devalue the property?

If the structures are a financial liability, provide a written cost estimate to remove the structures.

Does the property need any other cleanup performed? Farm dump, junk yard, asphalt/concrete, etc.

Valuation

Purchase Price _____

Total Acreage _____

Appraisal Price (total) _____

Appraisal Price (per acre) _____

Conservation Easement Price (total) _____

Conservation Easement Price (per acre) _____

What is the total number of farmettes the property could be reasonably subdivided into (minimum of 10 acres)? Provide details.

If land cannot be sold as originally purchased, the following provides a summary of the 1st preferred farmette option.

Proposed Farmette Size (acre) _____

Appraisal Price (per farmette) _____

Appraisal Price (per acre) _____

Total Acreage of Conservation Easement (per farmette) _____

Acreage of Developable Land (per farmette) _____

Conservation Easement Price (per farmette) _____

Conservation Easement Price (per acre) _____

Will a single family home be allowed on each farmette? If so, will the developable land be a floating lot or in a fixed location? Provide details.

Will each farmette pass a percolation test? _____

Will any of the farmettes be suitable for a horse farm/stable (minimum of 200 feet of road frontage)? _____

If land cannot be sold as originally purchased or 1st option above, the following provides a summary of the 2nd preferred farmette option.

Proposed Farmette Size (acre) _____
Appraisal Price or Assumed Value (per farmette) _____
Appraisal Price or Assumed Value (per acre) _____
Total Acreage of Conservation Easement (per farmette) _____
Acreage of Developable Land (per farmette) _____
Conservation Easement Price (per farmette) _____
Conservation Easement Price (per acre) _____

Will a single family home be allowed on each farmette? If so, will the developable land be a floating lot or in a fixed location? Provide details.

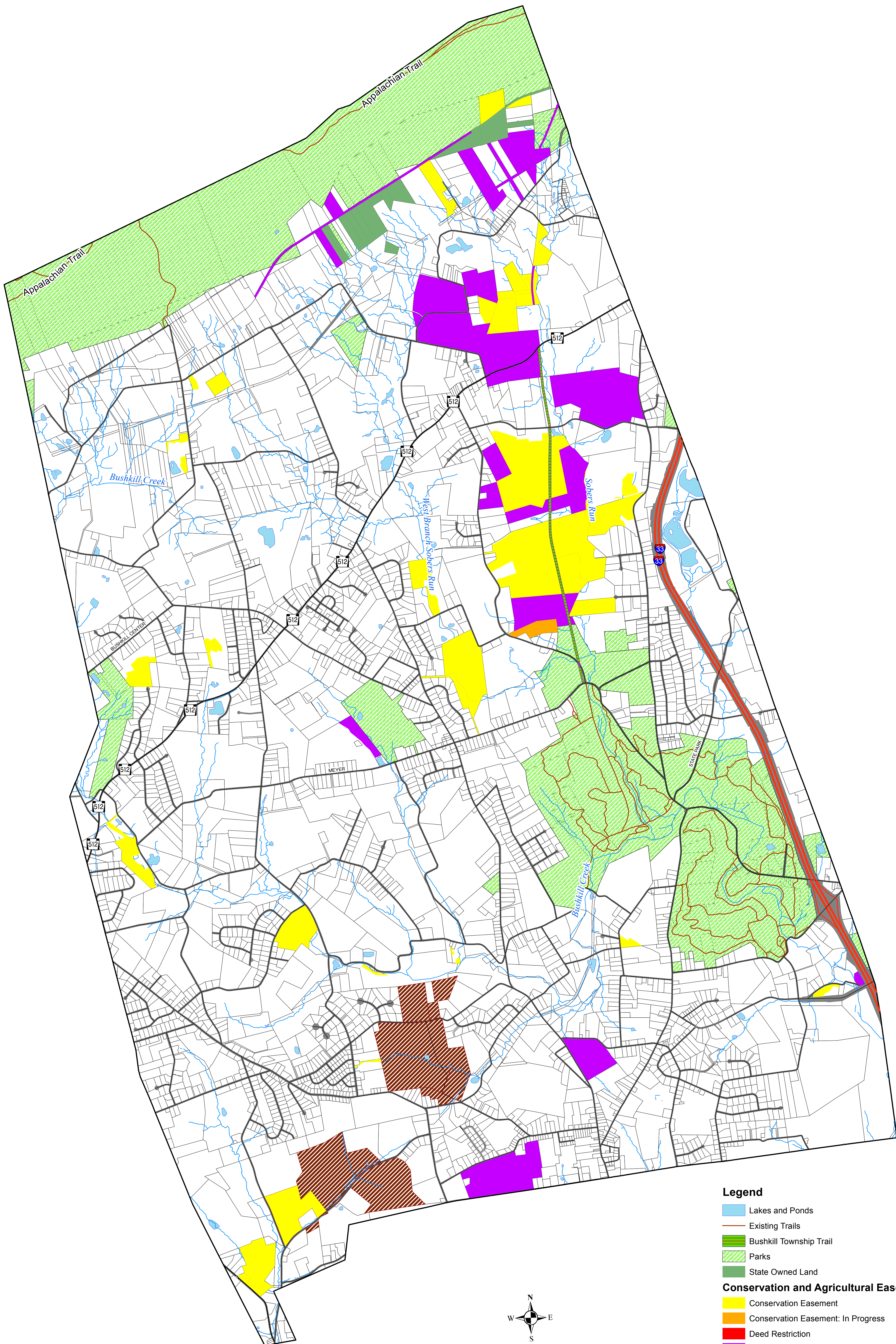
Will each farmette pass a percolation test? _____

Will any of the farmettes be suitable for a horse farm/stable (minimum of 200 feet of road frontage)? _____

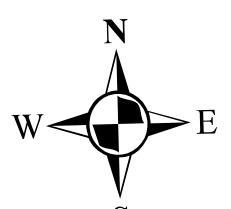
Appendix G

Current Conservation Easements and Acquisitions Map

Bushkill Township Open Space



- Legend**
- Lakes and Ponds
 - Existing Trails
 - Bushkill Township Trail
 - Parks
 - State Owned Land
- Conservation and Agricultural Easements**
- Conservation Easement
 - Conservation Easement: In Progress
 - Deed Restriction
 - Township Owned (Fee Simple);
 - Township Owned (Fee Simple), In Progress
 - Township Owned (Fee Simple): Under Agreement
 - PA Act 149 Agricultural Easements



0 0.25 0.5 1 Miles

Appendix H

Open Space Plan Flowchart

Open Space Plan Flowchart



Appendix I

Open Space Application



Bushkill Township

OPEN SPACE PROGRAM APPLICATION FORM

INSTRUCTIONS

1. Please print clearly.
2. Try to provide as much information as possible. Attach any additional information.
3. Return completed form to Bushkill Township Building, Attention: Brian Harris
1114 Bushkill Center Road, Nazareth, PA 18064 Fax: 610-759-8565

INFORMATION CONCERNING NOMINATED LAND

Tax Parcel Number/Numbers (Located on your tax bill): _____

Location of property (roads, intersections, landmarks): _____

Approximate acreage of entire property: _____

Approximate acreage to be preserved: _____

 Farmland acreage: _____

 Natural area acreage: _____

Mortgage on property (Y/N) _____ If Yes, amount? \$ _____

Lending Institution - Name and Address _____

Has the Lending Institution Agreed to Subordinate? _____

Brief description of land to be preserved (note items such as streams, woodlands, wetlands, agricultural lands, etc.): _____

Mapping (plot plan, tax map, etc.): *Please attach if available. Please sketch area for preservation.*

LANDOWNER INFORMATION:

Name: _____

Mailing Address: _____

Phone Number: _____

E-mail Address: _____

CONTACT PERSON (if different than landowner)

Name: _____

Mailing Address: _____

Phone/Email: _____

Are you willing to accept less than the appraised value of the area proposed for a conservation easement in order to receive preference for funding? YES MAYBE NO

LANDOWNER'S SIGNATURE: _____

DATE: _____

Any further comments may be made on the reverse of this sheet.

Completing this application does not in any way commit landowner to action. It is intended to provide the township with the information that we need to begin the evaluation process of determining the potential value of the parcel for our open space program.

Appendix J

Criteria Evaluation Score Sheets

Bushkill Township Open Space Criteria Evaluation

Property Name: _____

Conducted by: _____

Date: _____

	Acres	Percentage
Easement Area (total):		100%
- Farmland/Agric		
- Natural Area		

Farmland Preservation

Total Resource Values (Rate only farmed portion of property)

200 maximum points

TOTAL

1. Resource Values for Farmland Preservation *Select all that apply*

Acres 100 maximum points

Prime Farmland Soils Class 1 and/or 2

Statewide Important Soils Class 3 and/or 4

Other:

- Actively farmed
- Enrolled in Bushkill Township's Agricultural Security Area
- Current Soil Conservation Plan

-then add-

2. Additional Resource Values

100 maximum points

It is recognized that some of the attributes can not be determined at initial evaluation

Linkages and Connectivity

Y/N 40 maximum points

Adjacent to permanently protected farmland, open space, parkland

Identified within Bushkill Township's Official Map Reserve Area

Ecologically Significant Habitat

Y/N 20 maximum points

Evidence of presence of animal or plant listed on PNDI or similar generally accepted study, or found on property

Identified in the *Lehigh and Northampton Counties Natural Areas Inventory*

(i.e. Blue Mountain, Bushkill Creek Landscape Corridor, Knechts Landscape Corridor, Rismiller Landscape Corridor)

Other Factors to Consider:

Y/N 40 maximum points

Property area to be preserved is >35 acres

Township acquisition of conservation easement or restriction on future development is below market value

Availability of additional state and county funds to leverage Township funding

Property area to be preserved will have public access for hiking, hunting, fishing, or low-impact, recreation and education

Project Feasibility

Y/N - 90 maximum points

Current or past uses have seriously diminished conservation values. *(invasive, debris, erosion, contamination)*

Difficult easement enforcement due to multiple ownership, restricted access, frequent incidence trespassing, irregular configuration, etc.

Existing Encumbrances that pose a risk to conservation values

Requested provisions/retained rights significantly diminish conservation values

Township does not have adequate financial resources to own and manage the property itself

Project timeframe is unworkable

FARMLAND PRESERVATION

TOTAL POINTS

200 maximum points

Natural Areas Preservation

Total Resource Values (Rate only Natural Areas portion of property)

1. Resource Values for Natural Areas Preservation *Select all that apply.*

Woodlands (as watershed protection)

Wetlands (based on field delineation, known field condition, or major hydric soils (per USDA))

Vernal Ponds

Streams

Within 300 feet of wetlands or streams

Steep slopes (>12% slope)

Floodplains

-then add-

2. Additional Resource Values for Natural Areas Preservation

It is recognized that some of the attributes can not be determined at initial evaluation

Linkages and Connectivity

Adjacent to permanently protected farmland, open space, parkland

Identified within Bushkill Township's Official Map Reserve Area

Ecologically Significant Habitat

Evidence of presence of animal or plant listed on PNDI or similar generally accepted study, or found on property

Identified in the *Lehigh and Northampton Counties Natural Areas Inventory*

(i.e. Blue Mountain, Bushkill Creek Landscape Corridor, Knechts Landscape Corridor, Rismiller Landscape Corridor)

Other Factors to Consider:

Property area to be preserved is >35 acres

Township acquisition of conservation easement or restriction on future development is below market value

Availability of additional state and county funds to leverage Township funding

Property area to be preserved will have public access for hiking, hunting, fishing, or low-impact, recreation and education

Property provides a significant view from adjacent preserved lands, greenway, and/or public road

Project Feasibility

Current or past uses have seriously diminished conservation values. (*invasive, debris, erosion, contamination*)

Difficult easement enforcement due to multiple ownership, restricted access, frequent incidence trespassing, irregular configuration, etc.

Existing Encumbrances that pose a risk to conservation values

Requested provisions/retained rights significantly diminish conservation values

Township does not have adequate financial resources to own and manage the property itself

Project timeframe is unworkable

NATURAL AREAS PRESERVATION

TOTAL POINTS

maximum points

FARMLAND PRESERVATION - TOTAL POINTS

maximum points

WEIGHTED RANKING

NATURAL AREAS PRESERVATION - TOTAL POINTS

maximum points

WEIGHTED RANKING

WEIGHTED FINAL RANKING

maximum points

200 maximum points

Y/N

65 maximum points

Total

Y/N

135 maximum points

Y/N

50 maximum points

Y/N

35 maximum points

Y/N

50 maximum points

Y/N

- 90 maximum points

Appendix K

Baseline Evaluation Form

Baseline Data Report

for

Bushkill Township Open Space Program

[XXXX] Property

Bushkill Township, Northampton County, PA

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Appendices

- Appendix A Baseline Maps
- Appendix B Baseline Photographs
- Appendix C PNDI Project Environmental Review Receipt
- Appendix D List of Invasive Plants (only include if invasive plants are restricted in CE)

This report constitutes the Baseline Documentation prepared by Bushkill Township referred to in the “Conservation Easement” by and between [XXXX] (Grantors) and [XXXX] (Grantees).

I. General Easement Information

A. Grantor(s)

Grantor: _____ Co-Grantor: _____
Mailing Address: _____ Mailing Address: _____
Phone #: _____ Phone #: _____

B. Grantee(s)

Grantee: _____ Co-Grantee: _____
Mailing Address: _____ Mailing Address: _____
Phone #: _____ Phone #: _____

C. Current Owner (if not original Grantor)

Current Owner: _____
Mailing Address: _____
Phone #: _____

Current Owner: _____
Mailing Address: _____
Phone #: _____

Current Owner: _____
Mailing Address: _____
Phone #: _____

D. Property Information

Property Address: _____
Bushkill Township
Tax Parcel #(s): _____

Total Parcel Area: _____ acres, which is divided into the following sections.
Easement Area: _____ acres (subject to the Conservation Easement)
- Agricultural use: _____ acres as cropland
- Natural area: _____ acres as non-cropland
Reserve Area: _____ acres (not subject to the Conservation Easement)
Other Easement: _____ acres (not subject to the Conservation Easement) (e.g., Utility Co.)

Acres derived from Exhibit C of the Conservation Easement

Modify as need be to reflect Conservation Easement and specific property

E. Baseline Property Visit

Investigator:

Inventory Date:

Accompanied by:

F. Current Use(s) of Property

- | | | |
|---|--|--|
| <input type="checkbox"/> Residence | <input type="checkbox"/> Preservation | <input type="checkbox"/> Development |
| <input type="checkbox"/> Recreation | <input type="checkbox"/> Wildlife/Gameland | <input type="checkbox"/> Commercial/Retail |
| <input type="checkbox"/> Agriculture | <input type="checkbox"/> Pasture | <input type="checkbox"/> Industrial |
| <input type="checkbox"/> Municipal/Government | <input type="checkbox"/> Other: _____ | |

G. Conservation Values of the Property

- | | |
|--|---|
| <input type="checkbox"/> Prime Agricultural Soils: Classes 1-5; Prime Farmland and/or Farmland of Statewide Importance | |
| <input type="checkbox"/> Agricultural use (cropland - _____ acres/non-cropland - _____ acres) | |
| <input type="checkbox"/> Historical/Archaeological | <input type="checkbox"/> Natural resources |
| <input type="checkbox"/> Rural character | <input type="checkbox"/> Significant ecosystem (consistent with PNDI) |
| <input type="checkbox"/> Public education/recreation | <input type="checkbox"/> Wildlife/Gameland |
| <input type="checkbox"/> Open space | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Scenic views | |

The following Conservation Values, observed on the property at the time the conservation easement was placed, are documented and described in this Baseline Documentation report:

(As stated in the Easement. The CE Conservation Values and Baseline should say the same thing. It is important to write what is present and protected by the CE. Do not include values that are present, but not protected by CE.)

- Permanently preserve [XXXX] acres of open space and rural character in Bushkill Township;
- Protect approximately [XXXX] acres of farmland, of which approximately [XXXX] acres consists of prime agricultural soils;
- Preserve approximately [XXXX] acres of steep slope soils (over 15% grade);
- Protect approximately [XXXX] acres of forested and emergent riparian buffer, “description of” springs and streams, totaling approximately [XXXX] linear feet, and groundwater recharge areas;
- Preserve local groundwater reserves and protect water quality; and,
- Permanently preserve [XXXX] feet of scenic view along [XXXX] Road for the enjoyment of the general public traveling this thoroughfare.
- Preservation of land areas for passive outdoor recreation by, or the education of, the general public,
- Protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystem,
- Preservation of a historically important land area or a certified historic structure
- Preservation of open space (including farmland and forestland) where such preservation is:
 - a) for the scenic enjoyment of the general public and will yield a significant public benefit, or
 - b) pursuant to a clearly delineated federal, state, or local governmental conservation policy and will yield a significant public benefit.
- Preservation and/or protection of land (including wetlands and waters) within a watershed supporting “Chapter 93 designation” waterways and Exceptional Value wetlands (if connected to local streams) (Source: *Pennsylvania Code* Chapter 93 Water Quality Standards (Title 25 Pa. Code)?

(Bushkill Township refrains from giving specific legal, financial, and tax advice and recommends that each party to a conservation easement transaction obtain independent legal advice. Bushkill Township does not make assurances to whether a conservation easement donation will be deductible, what monetary gift the IRS and/or state will accept, what the resulting tax benefits of the deduction will be, or whether the donor's appraisal is accurate. Furthermore, this Baseline Documentation is not a Phase I Environmental Site Assessment.)

II. Supporting Documentation

A. Baseline Information on File

	On File at “the office of the Holder”	Recommend Acquiring
<input type="checkbox"/>	Surveyed site plan: entitled Conservation Easement Plan, Sheet [X of X], dated [DATE], last revised [DATE], created by [NAME OF SURVEYOR] (Exhibit B of the Easement)	<input type="checkbox"/>

B. Baseline Maps

	Included in Appendix A of this Baseline Documentation	Recommend Acquiring
<input type="checkbox"/>	Location Map: Data Sources: Parcels – [SOURCE]; Municipal Boundaries – [SOURCE]; Local Roads Names – [SOURCE]	<input type="checkbox"/>
<input type="checkbox"/>	Reduced Map of Exhibit B of the Easement: entitled Conservation Easement Plan, Sheet [X of X], dated [DATE], last revised [DATE], created by [NAME OF SURVEYOR] (full-scale maps are available at Bushkill Township or the County Courthouse, Recorder of Deeds. Please use full scale map for land planning and compliance with the easement restrictions.)	<input type="checkbox"/>
<input type="checkbox"/>	Aerial Photo: Data Sources: Parcels – [SOURCE]; Aerial Photo - [SOURCE]	<input type="checkbox"/>
<input type="checkbox"/>	Topographic Map: Data Sources: Parcels – [SOURCE]; Topographic Basemap - [SOURCE]; Slopes derived from 10 meter USGS digital elevation model	<input type="checkbox"/>
<input type="checkbox"/>	Soil Map: Data Sources: Parcels – [SOURCE]; Soils -USDA/Natural Resource Conservation Service 2004	<input type="checkbox"/>
<input type="checkbox"/>	Natural Features Map: Data Sources: Parcels – [SOURCE]; Roads – derived from [SOURCE] parcel data; Streams and Floodplains -PADEP; Wetlands – USFWS; Geology - DCNR/PA Geologic Survey; Natural Areas – [SOURCE]	<input type="checkbox"/>
<input type="checkbox"/>	Land Cover Map: Data Sources: Parcels – [SOURCE]; Aerial Photo – [SOURCE]; Land Cover – [SOURCE]	<input type="checkbox"/>
<input type="checkbox"/>	Photograph Location Map: Data Sources: Parcels – [SOURCE]; Aerial Photo – [SOURCE]; Photograph Location and Direction – [SOURCE]. Photographs were taken from fixed points on property & numbered 1-[XXX]. These unaltered, digital photographs accurately represent the condition of the property as of “Baseline Survey Date.”	<input type="checkbox"/>

The data displayed on these maps are regional in nature and are not suited for use in site-specific studies. Parcel lines, property boundaries, floodplains, roads, and other data were obtained from third party sources. These data are only approximate and are shown for illustrative purposes, only. Bushkill Township makes no representation about the accuracy or validity of these data. The user shall hold Bushkill Township harmless from any suits, claims, or actions arising out of the use of these maps or accompanying documentation.

C. Baseline Photographs

Photographic Documentation

See Appendix B for color photographs taken during the baseline property visit, with Photograph Location Map showing the approximate location and direction of these photographs.

D. Other (known) significant information

(if relevant to document existing conditions and support Conservation Values)

Natural Resources

Yes No

- Other deed restrictions, covenants, and/or easements:
If yes, list:
Comments:
- Forest Management Plan:
If yes, not available reviewed, if so: compliant w/ CE? yes no
Comments:
- Audubon tree registry program / Historic Tree
If yes, list:
Comments:
- Within a county or local Natural Area or Natural Resource Inventory site:
If yes, list:
Comments:
- Within an Audubon Important Bird Area:
If yes, list:
Comments:
- Within an Important Mammal Area:
If yes, list:
Comments:
- Within a National Registry of Natural Landmarks:
If yes, list:
Comments:
- National Wetlands Inventory on property:
If yes, list:
Comments:
- Within vicinity of Pennsylvania Natural Diversity Index (PNDI) site
If yes, list regulatory agencies:
Comments:
- Pennsylvania Code* Chapter 93 Water Quality Standards (25 Pa. Code §93.a-z.):
If yes:
Streams/waters EV HQ CWF MF
Wetlands EV HQ CWF MF
Comments:
- PFBC Class A Wild Trout Stream
If yes, list:
Comments:
- PFBC Wilderness Trout Stream
If yes, list:
Comments:

- PFBC Special Regulation Areas
If yes, list:
Comments:
- Stream sections that support natural reproduction of trout
If yes, list:
Comments:
- Within or in proximity to National or State Wild or Scenic River site
If yes, list:
Comments:
- Physically or ecologically connected to a local, state, national park; nature preserve; wildlife refuge; state gamelands; wilderness area or similar conservation area
If yes, list:
Comments:

Agricultural Resources

- Yes No
- Act 319/515 enrollment with Agricultural Reserve (Northampton County)
- Agricultural Security Area (Northampton County Planning Commission, 2001)

Forest Resources

- Yes No
- Act 319/515 enrollment with Forest Reserve (Northampton County)

Historic Resources

- Yes No
- National Register of Historic Places:
If yes, potentially eligible eligible registered
- Pennsylvania Inventory of Historic Places:
If yes, potentially eligible eligible registered
- Locally recognized historic site:
If yes, potentially eligible eligible registered
- Located within an Historic District

Other

- Yes No
- Other:

III. Existing Property Conditions

(be sure to include those things that are mentioned in the Conservation Easement and that support Conservation Purposes/Values)

A. Property Boundaries

Describe whether or not boundaries of the easement area were observed to be marked.

If so, which ones and how (posted signs, fences, flagging, etc.)?

Describe whether or not corners of the easement area were observed to be marked.

If so, which ones and how (concrete monuments, wooden stakes, iron pins/pipes, etc.)

Refer to any survey plans showing the corners found

Boundaries of easement:

- are clearly posted with signage or marked with other objects
- are not clearly posted with signage or marked with other objects:

Corners of easement:

- are indicated with iron pins, concrete monuments, or other fixed objects
- are not indicated with iron pins, concrete monuments, or other fixed objects

B. Man-Made Elements

Based on the baseline inventory, the following improvements/structures were observed on the property:

(If Impervious Coverage is restricted then we need to some how document or have the surveyor document the location and size of all necessary improvements).

(Depending on the Easement we may only have to document what is outside an Excluded Area. Building Envelopes, even with limited restrictions need to be documented even if there are only 1 or 2 restrictions.)

In Building Envelope: (use language used in CE)

- 1.
- 2.

In Easement Area: (use language used in CE)

- 1.
- 2.

Utilities: (above or below ground, private or public septic and water, etc.)

abandoned man-made materials (further discussed in Section IV A)

- 1.
- 2.

List livestock, domestic animal breeding/boarding on site:

- 1.
- 2.

C. General Parcel Description

(include general description of the parcels, including anything that further supports conservation if not supported in CE language)

Property location:

Surrounding land use:

Relevant property history:

Special features, if not relevant in following subsections:

NAI description, if not in another relevant section:

Topography and elevations of the property are depicted in the Topographic Map in Appendix A.

D. Natural Resources

Geology

The property is underlain with [XXXXXX] geologic formation as shown in the Natural Features Map in Appendix A. (Discuss further any geology protected in CE if applicable)

Soils

The property contains important soils for preservation, such as Prime Farmland, Farmland of Statewide Importance, hydric soils, and steep slope soils with 15% slope or greater. The location and extent of all soil types mapped on the property by the Natural Resource Conservation Service (NRCS) are shown on the Soils Map in Appendix A.

These soil types can be used to predict the suitability of a particular area for various land uses, such as cropland, forestry, septic, groundwater recharge and can be used to guide management strategies for the proper care of this valuable resource. A full description of each soil type can be obtained from your local Natural Resource Conservation Service office.

Hydrology

The property contains [DESCRIBE WETLANDS AND WATER RESOURCES WITHIN THE CONSERVATION EASEMENT AREA]

(List the Pennsylvania Code Chapter 93 Water Quality Standards (25 Pa. Code §93.a-z., including the separate Existing Use List designations) classifications for wetlands and any streams or waterbodies on the property (e.g., EV, HQ, CWF, MF). Wetlands in Bushkill Township are exceptional value unless they are not connected to or in very close proximity to streams. Consult with the Pennsylvania Department of Environmental Protection and the United States Army Corps of Engineers as necessary to make determinations.)

See the Orthophoto Maps, Topographic Map, Soil Map, Natural Features Map and Land Cover Map (list all applicable maps) in Appendix A for the location and extent of hydrologic features on the property. Note that all regulated features are not necessarily shown on all source maps.

Vegetation

The property consists of [DESCRIBE THE VEGETATION SPECIES AND COVERAGE WITHIN THE CONSERVATION EASEMENT AREA] Examples include upland forest, riparian forest, forested wetlands, wet meadow, coniferous forest, etc. Listing acreages for each is optional.)

The natural vegetative communities contain a mixture of native and non-native species. Invasive Plants, as listed in Appendix C, were not observed (were observed) to be planted on the property. Invasive Plants and other non-native species appear to have become naturalized in the..... As referred to in Paragraph XX of the Easement, Invasive Plants may include other species not listed in Appendix C of this Baseline Documentation. Please see the Orthophoto Maps and Land Cover Map in Appendix A for the location and extent of the vegetative communities observed on the property.

Wildlife

The property contains [DESCRIBE WILDLIFE AND HABITATS PRESENT WITHIN THE CONSERVATION EASEMENT AREA] (include vegetative communities, spring seeps, headwaters, Exceptional Value stream, (use NAI and PA Ch 93 info), unfragmented deciduous forest, vernal/seasonal pool(s), naturalized meadows, several springs, soft and hard mast trees, coniferous and evergreen trees, fruiting shrubs and vines, boulder outcropping and surface rock, stone berms, and downed or standing dead trees and living snags., trees with exfoliating bark for bat summer habitatrocky outcroppings, surface bouldering and trees with exfoliating bark, offer specialized habitat features required for the survival of a variety of Pennsylvania's wildlife. Surface boulders and rock outcrops provide snakes, small mammals and other wildlife with protective cover. These features may also lead to underground chambers providing snakes with winter habitat, especially those facing south, which are warmed by the sun. Snakes may also use boulder fields and rocky areas along the Blue Mountain Ridge for winter brumation. Pennsylvania bats, such as the little brown, big brown, eastern pipistrel, small-footed myotis and long-eared bat (some of which are rare in PA) may also use these same areas for their winter hibernation. Furthermore, these areas and the surrounding trees with exfoliating bark offer bats summer roosting and nursery habitat, as well. Also note if the property contained bird houses or other manmade nesting boxes.)

A formal wildlife survey was not conducted for the property. However, with the above-listed habitat features, a variety of wildlife likely inhabits the property. Some examples of these species are listed below:

- Mammals: whitetail deer, red fox, coyote, skunks, opossum, raccoon, ground hog, eastern cottontail, squirrels, eastern chipmunk, voles, mice, bats
- Reptiles: box turtle, black rat snake, eastern garter snake
- Amphibians: red-backed salamanders, two-lined salamander, spring peepers, wood frog, green frog, American toad
- Birds: red-tailed hawk, Cooper's hawk, American kestrel, black vulture, turkey vulture, great horned owl, eastern screech owl, wild turkey, king bird, woodpeckers, eastern bluebird, nuthatches, chickadee, blue jay, American robin, crows, mourning dove, swallows, wrens, various sparrows and finches.

Presence of specific plant, animal or habitat, threatened, rare or protected

Using the Pennsylvania Natural Heritage Program website (<http://www.naturalheritage.state.pa.us>) a search of the Pennsylvania Natural Diversity Index (PNDI) was conducted to determine whether any species of special concern are currently or historically extant within the vicinity of this property. The results of the search reported one potential impact. The agency reported with jurisdiction over

this species was listed as the Pennsylvania Department of Conservation and Natural Resources (PA DCNR). Because of the sensitive nature of this species, identification was not revealed. However, we do know that the PA DCNR is responsible for state threatened or endangered plant species.

E. Scenic Values

The property contained [DESCRIBE ANY SCENIC VALUES FROM OR ASSOCIATED WITH THE CONSERVATION EASEMENT AREA] (if applicable Relate the scenic view in support of the Easement should also be protected in CE)

F. Historic Values

The property contained [DESCRIBE ANY HISTORIC FEATURES/STRUCTURES WITHIN THE CONSERVATION EASEMENT AREA] (if applicable as a conservation value in CE, should also be protected in CE)

G. Proximity to Other Preserved Lands

The property is located [DESCRIBE THE EXISTING OR POTENTIAL LINKAGE TO OTHER OPEN SPACE OR PRESERVED LANDS ASSOCIATED WITH THE CONSERVATION EASEMENT AREA] (To support Conservation Values, note critical links to other open space and public use properties)

H. Resource Protection and Permanent Open Space

(Only if for IRS or Conservation Value documentation)

The preservation of the property is consistent with Bushkill Township's Comprehensive Plan and Open Space Plan.

IV. Provisions and Restrictions of the Easement

A. Conflicting Pre-existing Conditions

(For CE that has yet to be signed)

The following is a list of conditions observed on the property during the baseline property visit, prior to the signing of the Conservation Easement, which may conflict with the provisions and restrictions listed in the Conservation Easement.

- 1.
- 2.

-OR-

(for retroactive baseline, use A and B below to replace A above)

A. Potential Conflicting Conditions

(For retroactive baselines, only)

(with Paragraph #, Place under A. Potential Conflicting Conditions or B. Non-Compliance, as necessary. This section, A. Potential Conflicting Conditions, is for use when unsure of a violation.)

As of [DATE OF PROPERTY VISIT], the following is a list of conditions observed on the [NAME OF PROPERTY] property during the baseline property visit that require follow-up to determine their compliance with the Conservation Easement:

- 1.
- 2.

It is unknown whether these conditions were present prior to the placement of the Conservation Easement on the property.

B. Non-Compliance

(For retroactive baselines, only)

As of [DATE OF PROPERTY VISIT], the following is a list of conditions observed on the [NAME OF PROPERTY] property during the baseline property visit that are not compliant with the Conservation Easement:

- 1.
- 2.

It is unknown whether these conditions were present prior to the placement of the Conservation Easement on the property.

No other non-compliance issues were observed during the baseline property visit.

V. Signature Page

This report constitutes the “Baseline Documentation” referred to in the “Conservation Easement” between the “Grantor(s)/Owner(s)” and the “Grantee(s)” dated _____.

This Baseline Documentation inventories the existing conditions and relevant features of the property. By signing below, the parties agree that this Baseline Documentation provides, collectively, an accurate representation of the property at the time the Conservation Easement is placed OR the time the baseline inventory was conducted, which is intended to serve as an objective information baseline for monitoring compliance with the terms of the Conservation Easement.

Signature of Grantor

Date

Printed Name of Grantor

Signature of Grantee

Date

Printed Name of Grantee

Baseline Documentation completed by: _____

[AUTHOR'S NAME]

[TITLE], Bushkill Township

[REPORT DATE]

Appendix A

Baseline Maps

Appendix B

Baseline Photographs

[INSERT FIGURE (show photo location and direction)]

Figure

Photograph Location Map
[XXXX] Property
Bushkill Township, Northampton County, PA

Appendix C
PNDI Project Environmental Review Receipt

Appendix D List of Invasive Plants

(only include if invasive plants are restricted in CE)

Appendix L

Annual Monitoring Form

Easement Evaluation: please circle yes or no, explain any yes answers.

Subdivision / Construction

yes / no Has any subdivision occurred to the property?
yes / no Are there any new structures or construction? New Barn out of easement area

Property Use

yes / no Has the overall use of the property changed?
yes / no Are there any industrial or commercial activities?

Property Alteration

yes / no Have any structures been recently altered?
yes / no Have any structures changed in their size?

Timbering

yes / no Have any trees or undergrowth been cut, thinned or removed?
yes / no Have any trees been planted?

Mining

yes / no Has any Excavation or Earthmoving occurred?
yes / no Has any mining or resource extraction occurred? (do not include water wells.)

Environment

yes / no Has any Dumping or Depositing of Waste Occurred?
yes / no Have any changes occurred to Wetlands or sensitive areas?
yes / no Have ponds or drainages been constructed?
yes / no Have any roads lanes or trails been constructed?
yes / no Are there any land management problems? (erosion, flooding, etc.)

Other

yes / no Please list any other problems you believe exist and need further review?

If you found any potential violations please mark their location on the map and briefly describe the problem:

None noted.

Briefly describe your impression of the property / easement? Easement is undisturbed.

List any questions or concerns you have about the property / easement? None

Signed

Bushkill Township

Date:

Phone: