

**ARTICLE X
OWNERSHIP AND MAINTENANCE OF
CONSERVATION OPEN SPACE, OPEN LAND, RECREATION LAND, AND COMMON FACILITIES**

This Article X shall apply to any development which involves the ownership and maintenance of conservation open space, open land, recreation land, and common facilities (referred to as "common area" in this Article) as required by this Ordinance and the Subdivision and Land Development Ordinance.

1001 Purpose

The requirements of this Article X are intended to assure in perpetuity the ownership, use and maintenance of common areas. The general principle shall be to assign ownership and maintenance responsibility to that entity which is best suited for the same and which will allocate any associated costs to the individuals which directly benefit from the use of the common area.

1002 Plan and Legal Documents

The developer shall submit a plan and proposed legal documents for the purpose of dedicating, in perpetuity, the use, ownership and maintenance of the approved common area. The plan shall be approved by the Municipality with the advice of the Municipality Solicitor. The provisions of the approved Plan shall be incorporated into a development agreement with the Municipality, deed covenants and restrictions, or other legal document which will effect the plan and which can be enforced by the Municipality.

1003 Use Restriction

The use of any common area shall be limited to those uses which are specifically permitted or required by the applicable sections of this Ordinance and the Subdivision and Land Development Ordinance.

1004 Development Plan Designations

The subdivision/land development plan which will be recorded following final approval of the development shall clearly show all common areas and specifically note the use, ownership and maintenance responsibility of the same. Reference to the legal document(s) governing the use, ownership and maintenance of common areas shall be noted on the plan. The plan shall also contain the following statement: Open land, recreation land, and common facilities shall not be sold separately or be further subdivided or developed, nor shall such land be used for density for any other development.

1005 Methods for Use Dedication and Common Area Ownership and Maintenance

The use of common areas and common area ownership and maintenance shall be addressed by one or a combination of the methods which follow. In any case, the developer shall document to the satisfaction of the Municipality that the chosen method(s) will preserve the common area use rights established in accord with this Article and provide for the perpetual ownership and maintenance of all open land, recreation land, and common facilities. All methods shall establish a mechanism for the Municipality to effect the use dedication and require operation and maintenance of common areas, if the means established by the developer fail to provide the same.

All methods for use dedication and common area ownership and maintenance, any combination of methods, and any change in method which may be proposed by the ownership and maintenance entity, shall be subject to the approval of the Municipality. Operation and maintenance provisions shall include, but not be limited to, capital budgeting for repair and/or replacement of common facilities, working capital, operating expenses, casualty and liability insurance, and contingencies.

1005.1 Property Owners Association or Condominium Agreements

All common areas may be owned and maintained by a property owners association (POA) or condominium agreements (CA), including all lot owners in the development provided that:

- A. The POA/CA is established by the developer as a nonprofit corporation for the express purpose of ownership and maintenance of the common area, or as otherwise may be required by state statute.
- B. Participation in the POA/CA is mandatory for all lot owners.
- C. Provision is made for the maintenance of common areas during the lot sale period and the orderly transition of responsibility from the developer to the POA.
- D. The POA/CA is empowered to assess POA/CA members to fund the administration of the POA/CA and other costs associated with the common area responsibilities.

1005.2 Transfer to a Private Conservation Organization

In the case of open land and recreation land, the landowner may transfer fee simple title to the said areas, or parts thereof, to a private, nonprofit organization among whose purposes is the conservation of open land and/or natural resources provided that:

- A. The deed contains the necessary covenants and restrictions in favor of the Municipality to effect the use dedication and common area ownership and maintenance standards of this Article and this Zoning Ordinance.
- B. The organization proposed is a bona fide, operating and stable conservation organization with a perpetual existence, as approved by the Municipality.
- C. The conveyance of title contains the necessary provisions for proper retransfer or reversion if the organization is unable to continue to execute the provisions of title.
- D. A maintenance agreement between the developer, the organization and the Municipality is executed to the satisfaction of the Municipality and its Solicitor.

1005.3 Deed Restricted Private Ownership

On privately held lands used for agriculture, forestry enterprises and other uses permitted on open land in accord with this Ordinance, deed restrictions may be used to preserve open land provided such restrictions include a conservation easement in favor of the Municipality, with provisions for reversion to the Municipality, POA or trustee holding the remainder of the common area. Title to such restricted lands may be transferred to other parties for use as restricted by the deed.

1005.4 Deed or Deeds of Trust

The landowner may provide, as approved by the Municipality, for the use, ownership and maintenance of common area by establishing a trust for the same via a deed or deeds. The trustee shall be empowered to levy and collect assessments from the property owners for the operation and maintenance of the development.

1005.5 Conservation Easements Held by the Municipality

In the case of open lands and recreation lands, the Municipality may, but shall not be required to, accept title to conservation easements on any such lands. In such cases, the land remains in the ownership of an individual, POA or condominium, while the development rights are held by the Municipality. The lands may be used for agriculture, forestry enterprises and other uses permitted on open land in accord with this Ordinance; and, title to such lands may be transferred to other parties for use as restricted by the conservation easement.

1005.6 Fee Simple and/or Easement Dedication to the Municipality

In the case of open lands or recreation lands, the Municipality may, but shall not be required to, accept in fee, the title to any such lands, or any interests (such as development rights or conservation easements) therein, for public use and maintenance provided that:

- A. There is no consideration paid by the Municipality.
- B. Such land is freely accessible to the public.
- C. The Municipality agrees to and has access to maintain such lands.

1006 Failure to Preserve Dedication of Use and Operation and Maintenance of Common Area

If the method established for the dedication of use and operation and maintenance of common areas fails to do so in reasonable order and condition in accord with the approved development plan, the Municipality shall have the right and authority to take all necessary legal action to effect such use dedication, operation and maintenance. The action of the Municipality shall be in accord with the following:

1006.1 Notice

The Municipality shall serve written notice on the assigned entity or the property owners in the development setting forth the details of the failure of the entity with regard to use dedication and operation and maintenance of common areas.

1006.2 Correction of Deficiencies

The notice shall include a demand that the deficiencies be corrected in a reasonable period of time which shall be stated in the notice.

1006.3 Public Hearing

A public hearing shall be conducted subsequent to the notice and shall be advertised in accord with the definition of "public notice" contained in this Ordinance. At such hearing, the Municipality may modify the terms of the original notice as to the deficiencies and may extend the time for correction of the deficiencies.

1006.4 Failure to Correct

In the event the deficiencies in the notice, as may have been modified at the public hearing, are not corrected in accord with the established time period, the Municipality may enter upon the common area and maintain the same and/or correct the deficiencies. The Municipality shall continue such action for such time as may be necessary to correct the deficiencies. Said action shall not constitute a taking or dedication of any common areas, nor vest in the public the right to use any common area.

1006.5 Reinstatement of Responsibility

The responsibility of operation and maintenance shall not be reinstated to the assigned entity until such time as the entity has demonstrated to the Municipality that the proper steps have been effected to modify the terms of use dedication, operation and maintenance; and/or to reorganize or replace the responsible entity so that use dedication and operation and maintenance established by the approved development plan will be assured.

1006.6 Appeal

Any party to the action of the Municipality may appeal such action to court as provided for such appeals in the Pennsylvania Municipalities Planning Code.

1006.7 Public Costs

The costs of the preservation of use dedication and the cost of maintenance and operation of any open land conducted by the Municipality in accord with this Article, including any administrative and legal costs, shall be assessed ratably against the properties in the subject development which have a right of enjoyment and/or use of the common areas.