

# Article XVII: Open Space Design Option

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## SECTION 240-1700. PURPOSE

This Article establishes alternative development design to support protection of diverse ecology, flora and fauna, natural resources, historic and archeological resources and landscapes, wildlife habitats, agricultural areas, and scenic views and viewsheds that characterize the Township, while permitting site responsive development.

This Article promotes the following open space resource conservation objectives:

- A. To preserve natural resource, including waterbodies, floodplains, wetlands, wet soil conditions, very steep slope areas, ridgelines, rock outcroppings, groundwater resources and recharge areas, prime agricultural soils and woodlands, hedgerows; cultural resources including historic and archeological resources and landscapes; and open space areas, including areas for their value as a wildlife habitat or corridor, as sites of unique vegetation (such as specimen trees and heritage trees), or other sites or features contributing to the natural diversity of the Township;
- B. To protect scenic views and viewsheds from encroachment by development;
- C. To retain and protect open space areas within development;
- D. To minimize potential adverse impacts resulting from the location of residential development adjacent to nonresidential uses including agricultural lands;
- E. To provide passive recreation areas under the “Open Space, Trails & Parks Master Plan and Needs Assessment” (July 17, 2019), as updated;
- F. Provide opportunity for flexibility in lot design and dwelling types not afforded by conventional lot-by-lot development, and for more varied, innovative, and efficient development patterns.
- G. To provide a means to attain the community development in Article I relative to orderly growth and protection of resources.

## SECTION 240-1701. QUALIFYING CONDITIONS

- A. The open space design option shall be permitted as specified in zoning districts.
- B. The Township may retain such consultants as necessary to review and certify the accuracy of all plans and other documentation submitted in accordance with this Article, with reasonable and necessary charges for such consultancy to be borne by the applicant.
- C. A minimum of five (5) lots or dwelling units shall be proposed in order to qualify for the use of the open space design option.
- D. The applicant is strongly encouraged to submit a sketch plan to the Township Planning Commission and to have a pre-application meeting(s) and discuss both community development and open space resource conservation objectives with the Planning Commission

prior to conditional use review submission and formal development plan submission under the Subdivision and Land Development Ordinance.

- E. The applicant shall demonstrate to the satisfaction of the Township that adequate water supply can be provided for both intended residential and open space uses.
- F. The applicant shall demonstrate to the satisfaction of the Township that adequate sewage facilities can be provided based on Article II terminology.
- G. The tract of land to be developed shall be in single and separate ownership or, if in multiple ownership, shall be developed according to a unified plan with common authority and responsibility as documented in a manner acceptable to the Township.

**SECTION 240-1702. REVIEW PROCESS**

The open space design option shall only be permitted upon approval as a conditional use, the intent of which is to determine if the proposed development is consistent with the purposes and provisions of this Chapter as applied to the particular parcel(s) on which such is proposed. The intent of the Township at the conditional use stage is not to obtain and review a fully engineered plan. Upon receiving conditional use approval, full engineering and construction details shall be required at the subdivision and land development review stage in accordance with Township standard. Prior to conditional use review per Article XXV, the applicant is strongly urged to have a pre-application meeting with the Planning Commission. This informal process recommends that the applicant and Planning Commission engage in a conceptual discussion and site walk prior to proceeding to a formal review of the project. Nothing in this Article shall be construed to relieve the applicant from obtaining plan approval in accordance with the Kennett Township Subdivision and Land Development Ordinance, other applicable ordinances, or other required federal, state, Township or county approvals.

**SECTION 240-1703. PERMITTED USES**

Open space design option development may include any of the following uses:

- A. Single-family detached dwelling.
- B. Two-family dwelling (twin and/or duplex).
- C. Multifamily dwelling.
- D. Accessory residential uses through adaptive re-use of a historic resource.
- E. Open space uses per § 240-1705.C.2.

**SECTION 240-1704. AREA AND BULK REGULATIONS**

A. Minimum common open space area.

1. The minimum area of common open space shall be at least the percentage of gross tract area stipulated for the applicable zoning district as follows:

District	Minimum Area of Common Open Space
RA	70%
RR	55%
RS	50%

2. Where a single contiguous tract of land falls into more than a one zoning district, the minimum common open space requirement shall be met separately in each zoning district as stipulated above.

B. Maximum density of development.

1. Establishment of net tract area. For purposes of establishing the maximum permissible number of lots or dwelling units on any tract where the open space design option is utilized, the net tract area shall include all areas within the titled lines of the tract, excluding the following:
  - a. Any existing or proposed area of permanent right-of-way or easement for a public or private street or for aboveground or underground utilities other than for local service, unless such is intended to be discontinued, abandoned, and removed under the proposal that in question.
  - b. An area equivalent to fifty (50) percent of any area comprised of one (1) or more of the following types of land and excluding any area already excluded by Subsection B.1.a:
    - 1) Any area within the Flood Hazard District;
    - 2) Any area comprising wetlands under jurisdiction of the United States Army Corps of Engineers and/or the Pennsylvania Department of Environmental Protection; the Township reserves the right to retain a qualified consultant to ascertain the extent of jurisdictional wetlands, with reasonable and necessary charges therefor to be borne by the applicant; and/or
    - 3) Any area of very steep slope.
2. Calculation of maximum density. The maximum permissible number of lots or dwelling units on any tract utilizing the open space design option shall be calculated by multiplying the net tract area in acres, established above, by the multiplier stipulated below, rounded to the nearest whole number:

District	Density Multiplier
RA	0.30
RR	0.52
RS	0.70

3. Where a single contiguous tract of land falls into more than a single zoning district, the gross density of development permitted and required common open space, including any bonus density for historic resources, shall be calculated separately for each zoning district. The dwelling units and open space calculated for each zoning district shall be located within their respective zoning district boundaries.
  4. The applicant is advised that the maximum number of units calculated under the provisions herein may not always be achievable while meeting requirements for minimum restricted open space and all other standards, criteria and regulations herein.
  5. In addition to the maximum permissible number of lots and dwelling units on any tract, an applicant shall be permitted additional dwelling units and accompanying lots only through the preservation and adaptive reuse of historic resources per this Article and Article XVI. Historic resources may be placed on a single additional lot, may each be located on their own additional lot, or a combination thereof.
- C. Area and bulk regulations. The following area and bulk regulations shall apply to all principal and accessory residential uses and open space uses.
1. Minimum separation shall not be less than fifty (50) feet between any point on a rear wall of any residential structure and any point on any other principal building.
  2. Minimum setback from the edge of cartway (or outside edge of curb, if applicable) of any street shall not be less than twenty-five (25) feet, except as provided in § 240-1705.A.
  3. Principal or accessory buildings shall be located no less than ten (10) feet from any lot line of lots within the development.
  4. Where greater setbacks do not otherwise apply, front-facing garages, whether attached or detached, shall be set back a minimum of thirty-five (35) feet from the edge of the right-of-way or from the sidewalk, whichever results in the greatest setback. In addition, front-facing garages shall be set back a minimum of eight (8) feet from the front facade of the dwelling unit. If the front facade is not uniform, such setback shall be measured from the point of the facade nearest the street.
  5. Dwelling units shall, to the maximum extent possible, be accessed from streets within the development, rather than from streets bordering the tract.
  6. Maximum lot coverage.
    - a. For multifamily dwellings units without individual lots, maximum lot coverage shall be forty percent (40%) of the land area devoted to such dwellings. The land area used to satisfy this limitation shall be indicated on submitted plans, shall constitute a single contiguous land area, including buildings, parking, access, and yard areas clearly associated with and in the immediate vicinity of the subject multifamily dwelling(s), and shall not include any land area that is counted toward meeting

- minimum common open space requirements nor any coverage nor yard area requirements for any other dwelling unit(s) or other permitted use(s).
  - b. For multifamily dwelling units with individual lots, maximum lot coverage shall be forty percent (40%) of the lot area where such dwellings are located.
  - c. For two-family dwelling units, maximum lot coverage shall be thirty-five percent (35%) of the lot area where such dwellings are located.
  - d. For single-family detached dwelling units, maximum lot coverage shall be thirty percent (30%) of the lot area where such dwellings are located.
  - e. For open space uses, maximum lot coverage shall be ten percent (10%) of the common open space area.
7. Maximum building height shall not exceed thirty-five (35) feet.
  8. Maximum building length, measured along any continuous facade in the same linear direction, shall not exceed one-hundred and sixty (160) feet.
  9. No individual group or cluster of residential structures shall comprise more than eight (8) residential structures or more than twenty-four (24) individual dwelling units; cluster shall be separated from one another dependent on site constraints and site feature preservation priorities.
  10. No residential lot shall be created under these provisions where the Board of Supervisors is not satisfied that a principal residential structure may be developed in compliance with this Subsection C. The applicant shall indicate on plan drawings the available building envelope for each use demonstrates feasible compliance with this Subsection C including conservation of scenic views and other resources.

**SECTION 240-1705. CONSERVATION AND DEVELOPMENT DESIGN STANDARDS**

**A. General development standards.**

1. All applicable standards of Article XIX and Article XX shall apply.
2. To protect the interests of existing neighboring properties, all proposed dwelling units in an open space design option development shall be situated so as to maintain a minimum setback from any predevelopment perimeter boundary of the tract, in accordance with the following:

District	Minimum Setback from Tract Boundary (feet)
RA	75
RR	75
RS	50

3. Placement of buildings and design of internal circulation systems shall minimize adverse impact to existing streets.
4. At its sole discretion, the Board of Supervisors may require the applicant to provide architectural renderings generally illustrating the intended exterior design, including principal exterior materials, of any structures to be built on lands developed in accordance with this Article. Such drawings shall effectively present an overall architectural theme which is internally consistent and compatible with Township

character, surrounding properties, and objectives in § 240-1700. The Board of Supervisors may further require, as a condition of approval, establishment of specific architectural design guidelines and/or a formal design review process, or other appropriate means to guarantee adherence to the intended architectural theme presented by the applicant.

B. Open space resource protection standards.

1. In utilizing the open space design option, the proposed design shall, to the greatest degree practicable, limit disturbance to significant natural, historic, scenic, and cultural resources identified in the site analyses required in accordance with the Kennett Township Subdivision and Land Development Ordinance.
2. Conservation of scenic views and other resources.
  - a. The applicant shall demonstrate maximum conservation of scenic views from public streets and neighboring residential properties, including but not limited to lines of view from vista points as shown on the Kennett Township Visual Resources Analysis Map, and direct lines of view from adjacent public streets to visual accents included on said map. The applicant may demonstrate conservation of views either through location of proposed development outside of such views or through retention of natural vegetation, existing structures, or existing topography.
  - b. Views of buildings from streets and properties abutting the development shall be minimized by the use of existing topography, natural vegetation, or additional landscaping which meets the landscaping and screening requirements of this Chapter and the Subdivision and Land Development Ordinance.
  - c. Every attempt shall be made to situate all buildings below ridgeline elevations and maintain existing trees and woodland vegetation along ridgelines.
  - d. Where conservation of scenic views is not practicable in the context of proposed development plans, the applicant shall demonstrate mitigation of visual impacts through at least one (1) of the following means:
    - 1) Provision of introduced landscaping to effectively screen the proposed development from view from public streets and adjacent residential properties per Article XX.
    - 2) Submission of individual building design plans with sufficient detail to demonstrate, in terms of how such buildings may be viewed from public streets or neighboring residential properties, reasonable replication of proportional relationships of form and massing evident in existing historic resources, including ratios of height to width, length of individual facade segment, roof pitch, relative size and placement of windows, doors and other facade details.
    - 3) The distance from point of public or neighboring view also may be considered as a mitigating factor in review of plans for buildings within such view.
3. The applicant shall demonstrate compliance with applicable Flood Hazard District regulations, natural resource protection standards of Article XVIII, and historic resource protection standards of Article XVI, as well as the Subdivision and Land Development

- Ordinance. In addition, the applicant shall demonstrate compliance with special protection guidelines for designated special protection waters.
4. Where feasible, the applicant shall demonstrate conservation of any site included in the Chester County Natural Areas Inventory and/or any unique natural area inventoried in "Linking Landscapes, A Plan for the Protected Open Space Network in Chester County," as may be amended from time to time.
  5. Except as otherwise may be specified in this Article, development shall not be permitted in the common open space. Where disturbance of such is proposed, the determination of necessity for such disturbance shall lie with the Board of Supervisors. When permitted, disturbance shall be kept to a minimum. For example, clearing of woodland habitat shall generally be prohibited except as necessary to create trails or passive recreation facilities.
  6. In consideration of approval of any development utilizing an open space design option, the Township may require that the applicant demonstrate maximum practicable conservation of Class I and Class II woodlands and any area of interior woodland as designated on the Kennett Township Woodland Classification Map and Interior Woodlands Map, as well as any woodlands located within a designated woodland corridor or riparian corridor, specimen trees, and heritage trees. The Township also may require reforestation of non-wooded open space within any woodland corridor or riparian corridor. In support of such conservation and/or reforestation, the applicant shall incorporate appropriate long-term conservation and woodland management provisions within the required open space management plan, including provision for reforestation where deemed appropriate by the Township.
- C. Open space configuration and use standards.
1. Configuration of common open space. The location and layout of common open space shall be configured so as to promote adherence to purposes of § 240-1700 and resource protection standards in § 240-1705.B and § 240-1705.D and shall conform to the following conditions:
    - a. A portion of the common open space equal in area to at least fifteen percent (15%) of the gross tract area shall exclude areas comprised of flood hazard districts, wetlands, very steep slopes, and sewage systems.
    - b. Except where the primary purpose of the open space is the preservation of agricultural uses or conservation purposes, at least thirty percent (30%) of the land comprising the common open space in the RA and RR Districts and fifty percent (50%) of the land comprising the common open space in RS the Districts shall be available for the common use and passive enjoyment of residents of such development.
    - c. Open space shall be directly accessible to the largest practicable number of lots within the development. Non-adjoining lots shall be provided with safe and convenient access to open space land where such land is intended for the enjoyment of residents.
    - d. Open space shall be interconnected wherever possible to provide a continuous network of open space land within and adjoining the development.

- e. Except as may be permitted in Subsection C.1.f and C.2, no portion of the common open space shall be measured as contributing to the minimum required common open space area where such land:
    - 1) Is less than one hundred (100) feet in width at the narrowest dimension at any point;
    - 2) Is located within thirty-five (35) feet of any structure except structures devoted to permitted open space uses;
    - 3) Is occupied by impervious surfaces;
    - 4) Is included within the lot lines of any lot less than ten-thousand (10,000) square feet in area;
    - 5) Comprises a single parcel less than one (1) acre in area; or
    - 6) Is occupied by stormwater management facilities, excluding stormwater conveyance facilities, except in accordance with § 240-1705.E.
  - f. Where common open space in the form of greens, commons, squares, or parks are proposed within the development, it shall be designed to meet § 240-2017.
2. Uses permitted in the open space. Except where approved by the Board of Supervisors and as established in the required open space management plan, areas designated for open space purposes may be used only for the following purposes:
- a. Crop or pasture land, including animal use such as equine.
  - b. Cultivation of nursery stock or orchard trees.
  - c. Woodland, meadow, wetland, wildlife habitat, game preserve, or similar conservation-oriented area.
  - d. Passive park or passive outdoor recreation, not including golf courses.
  - e. Neighborhood open space uses, such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses and other uses of similar character and potential impact as determined by the Board of Supervisors.
  - f. Land application of wastewater, including drip irrigation, where permitted by the Township Act 537 Sewage Facilities Plan and where the Board of Supervisors is satisfied that adequate provision(s) is guaranteed for the long-term management and maintenance of such system.
  - g. Individual sewage systems outside the bounds of lots which they serve, where permitted by the Township Act 537 Sewage Facilities Plan and subject to determination by the Board of Supervisors that adequate provision is made for long-term management and maintenance of such systems by owners of the lots which they serve.
  - h. Stormwater management facilities per § 240-1705.E.
  - i. Underground utility rights-of-way.
  - j. Adaptive reuse of historic resources, or other existing structure, for uses consistent with permitted open space use of the land, including conservation education uses and community recreational purposes, per Article XVI.
  - k. Planted areas used for screening purposes and noise control.
  - l. Uses customarily incidental to the principal uses permitted herein.



3. Subject to the provisions for calculating minimum required open space in this Article, sewage systems and stormwater management systems, including basins, may be located entirely or partially within common open space areas; however no such system shall be located in constrained lands in Subsection C.1.a. Where such are located, easements satisfactory to the Board of Supervisors shall be established to require and enable maintenance of such facilities by the appropriate parties.
  4. Except to provide for permitted open space uses, designated open space shall be restricted from further subdivision or development by deed restriction, conservation easement, restrictive covenant, or other agreement in a form acceptable to the Township and duly recorded in the office of the Recorder of Deeds of Chester County.
- D. Special provisions for protection of historic resources.
1. Historic resources and their historic landscape context shall be preserved through their incorporation into development plans and design, including historic structures, ruins or archaeological sites, historic road or other transport traces, paths and trails, and any other historic landscape features.
  2. Standards for historic resources. The applicant shall comply with the following standards where renovation or reuse of any historic resource is proposed.
    - a. The rehabilitation, alteration, or enlargement of any such historic structure shall meet §240-1603.
    - b. The applicant shall demonstrate preservation of sufficient landscaped or buffer area surrounding historic resources to retain the integrity of the historic landscape setting. The applicant may demonstrate mitigation of impacts to historic landscape setting through introduction of vegetation or other screening in harmony with such landscape setting and through retention of view lines which visually link historic resources to their landscape setting.
    - c. Facilities and equipment for heating/air conditioning, trash collection and compaction, and other structural elements not in keeping with historic and/or architectural character shall be concealed architecturally or otherwise screened from view.
    - d. The applicant shall guarantee permanent adherence to these standards through establishment of appropriate easement(s) acceptable to the Township Solicitor, such easement(s) to be conveyed to Kennett Township or to a bona fide conservation organization or agency acceptable to the Board of Supervisors.
- E. Stormwater management and sewer systems in common open space.
1. At the discretion of the Board of Supervisors, upon recommendation by the Planning Commission, the area devoted to stormwater management and sewer facilities may be included within the minimum required common open space where the applicant can demonstrate to the satisfaction of the Board of Supervisors that such facilities are designed in accordance with this Section and shall achieve the following objectives:
    - a. Promote recharge of groundwater systems; or

- b. Be available and appropriate for passive recreational or scenic enjoyment.
2. Where permitted, the area of stormwater facilities that may be included within the minimum required common open space shall be calculated as follows:
- a. The total stormwater volume to be managed within the tract under application shall be calculated.
  - b. For all areas satisfying either objective in § 240-1705.E.1, the volume of stormwater managed within such areas shall be calculated.
  - c. The area that may be included as part of the minimum required common open space shall be calculated as the total defined area (established as provided in subsection d.) multiplied times the ratio of calculation in § 240-1705.E.2.b divided by the calculation in § 240-1705.E.2.a.
  - d. The defined area shall be calculated by including all areas within the perimeter embankments or berms of all stormwater detention and retention facilities. The measurements shall include all areas within the contour line established by the top elevation of the stormwater retention embankment on the outlet or downhill side of the basin. This area shall include the fill portion of the embankment extending from the toe of the fill slope to the top of the embankment. Where, due to site grading, the limit of the fill slope is not clear, the limit shall be determined by the Board of Supervisors upon recommendation by the Township Engineer. The area thus enclosed is the "defined area."
3. The applicant recognizes that any area considered as applicable for inclusion with the minimum required open space shall be subject to management that meets the required open space management plan.
4. The stormwater management facility must comply with the requirements of the Kennett Township Stormwater Management Ordinance and shall utilize infiltration to accommodate water quality and runoff volume requirements in order to be considered for inclusion in the minimum open space requirements.
5. The above provisions may be waived or altered by the Board of Supervisors where the applicant has demonstrated to the satisfaction of the Board of Supervisors that variation from these standards results in a pattern of development more fully in compliance with the purposes of this Article.

**SECTION 240-1706. STANDARDS FOR OWNERSHIP OF COMMON OPEN SPACE**

Subject to permanent conservation restrictions, common open space land in any subdivision may be owned by a homeowners' association, the Township, a land trust, another conservation organization recognized by the Township, or by a similar entity, or may remain in private ownership. Common open space may also be owned in any combination of these permitted ownership options if approved by the Township.

- A. Offer of dedication.
  - 1. The Township may, but shall not be required to, accept dedication in the form of fee-simple ownership of common open space land, provided:
    - a. Such land is accessible to the residents of the Township;
    - b. There is no cost of acquisition other than any costs incidental to the transfer of ownership such as title insurance; and
    - c. The Township agrees to and has access to maintain such lands.
  - 2. Where the Township accepts dedication of common open space land that contains improvements, the Board of Supervisors may require the posting of financial security to ensure structural integrity of said improvements as well as the functioning of said improvements for a term not to exceed eighteen (18) months from the date of acceptance of dedication. The amount of financial security shall not exceed fifteen percent (15%) of the actual cost of installation of said improvements.
  
- B. Homeowners' association. The common open space land and associated facilities may be held in common ownership by a homeowners' association. The homeowners' association shall be formed and operated under the following provisions:
  - 1. The developer shall provide a description of the homeowners' association, including its bylaws and methods for maintaining the open space.
  - 2. The homeowners' association shall be organized by the developer and operate with financial subsidization by the developer before the sale of any lots in the development.
  - 3. Membership in the homeowners' association is mandatory for all purchasers of homes therein and their successors. The conditions and timing of transferring control of the homeowners' association from developer to homeowners shall be identified. Transfer of the homeowners' association from the developer to the owners shall occur on or before such time when seventy-five percent (75%) of the lots or units have been sold. Where a development is being built in phases, the seventy-five percent (75%) requirement for transfer of the homeowners' association to the owners shall apply to each phase.
  - 4. The homeowners' association shall be responsible for maintenance and insurance on common open space land, enforceable by liens placed by the homeowners' association. Maintenance obligations may be enforced by the Township which may place liens to recover its costs. Any governmental body with jurisdiction in the area where the development is located may place liens on the owners of the open space to collect unpaid taxes.
  - 5. The members of the homeowners' association shall share equitably the costs of maintaining and developing such common land. Shares shall be defined within the homeowners' association bylaws. Homeowners' association dues shall be structured to provide for both annual operating costs and to cover projected long-range costs relating to the repair of any capital facilities (which shall be deposited in a sinking fund reserved for just such purposes).
  - 6. In the event of a proposed transfer within the methods here permitted of common open space land by the homeowners' association, or of the assumption of maintenance of

- such land by the Township, notice of such action shall be given to all property owners within the development.
7. The homeowners' association shall have or hire adequate staff to administer common facilities and properly and continually maintain the common open space land.
  8. The homeowners' association may lease open space lands to any other qualified person or corporation for operation and maintenance of such lands, but such a lease agreement shall provide:
    - a. That the residents of the development shall have controlled access to the open space lands contained therein unless such lands are in uses that do not permit such access, such as uses permitted in § 240-1705.C.2.a and b.;
    - b. That the common open space land to be leased shall be maintained for the purposes set forth in this Chapter; and
    - c. That the operation of open space may be for the benefit of the residents only or may be open to the public, at the election of the developer and/or homeowners' association, as the case may be.
  9. The lease shall be subject to the approval of the Board, and any transfer or assignment of the lease shall be further subject to the approval of the Board. Lease agreements so entered upon shall be recorded with the Recorder of Deeds of Chester County within thirty (30) days of their execution, and a copy of the recorded lease shall be filed with the Secretary of the Township.
- C. Condominiums. The common open space land and associated facilities may be held in common through the use of condominium agreements, approved by the Board of Supervisors. Such agreement shall be in conformance with the Uniform Condominium Act of 1980, as amended. All common open space land shall be held as common element.
- D. Dedication or transfer of easements, Subject to approval by the Board of Supervisors, easement(s) providing for conservation management of common open space lands and/or for public access to such lands may be dedicated to the Township or transferred to a nonprofit conservation organization or Chester County. Title to such lands shall remain as otherwise approved in accordance with this section.
- E. Private ownership of common open space. Subject to approval by the Board of Supervisors, common open space may be privately owned on individual lots within the open space design subdivision. Such open space shall meet the following criteria to ensure its continued protection and maintenance:
1. The common open space shall be clearly designated on the plan, as well as a note specifying the restrictions and other requirements that apply to the open space. [See § 240-1706.E.3 below.] Such open space shall be common in perpetuity from further subdivision or land development through deed restriction, conservation easement, or other agreement in a form acceptable to the Township Solicitor and duly recorded in the Chester County Office of the Recorder of Deeds.

2. The portions of the lot not subject to restrictions, including the house, accessory buildings, and surrounding uncommon yard and lot area, shall also be clearly designated and recorded on the final plan.
3. The common open space shall be subject to the applicable maintenance provisions of § 240-1707. In addition to maintenance provisions, the plan notes shall state what activities are permissible or prohibited within the privately held common open space. The maintenance provisions and use restrictions shall be placed in the deeds for each lot containing common open space and recorded in the Chester County Office of the Recorder of Deeds. Specific language to be included on the deeds shall be in a form acceptable to the Township Solicitor.

**SECTION 240-1707. OPEN SPACE MANAGEMENT PROVISIONS**

A. Required open space management plan.

1. Any application under the open space development option, or residential development with applicable green area or open space, per §240-2017, shall include a plan for the long-term management of the common open space which is to be created as part of the development, including maintenance and management of any wastewater disposal, water supply, stormwater management or any other common facilities which may be located within areas of common open space. Such a plan shall include a narrative discussion of:
  - a. The manner in which the common open space and any facilities included therein will be owned and by whom they will be managed and maintained;
  - b. The conservation, land management agricultural techniques, vegetative management, and practices which will be used to conserve and perpetually protect the common open space, including conservation plan(s) approved by the Chester County Conservation District where applicable;
  - c. Detailed standards and schedules for maintenance of the designated open space, including maintenance of vegetation;
  - d. The professional and personnel resources that will be necessary in order to maintain and manage the property;
  - e. The nature of public or private access that is planned for the common open space and all uses within such open space; and
  - f. The source of money that will be available for such management, preservation and maintenance on a perpetual basis.
2. Where an application for conditional use approval is submitted prior to preliminary plan submission, such application shall include a conceptual open space management plan outlining compliance with the issues stated above. A complete open space management plan shall be submitted with preliminary plan submission.
3. The Board of Supervisors may require that the management plan be recorded with the final subdivision and land development plans in the office of the Recorder of Deeds of Chester County. In addition, the Board may require as a condition of land development

- approval that appropriate management contracts be established as evidence of the ability to adhere to the provisions of the approved management plan.
4. In order to allow for the changing needs inherent in the perpetual management of land, the management plan shall contain a provision to the effect that it may be changed by written application to the Board of Supervisors. Approval of such application by the Board shall not be unreasonably withheld or delayed, so long as the proposed change is feasible and consistent with the purposes of preservation of open space set forth in this Article and so long as the plan for such change avoids a likelihood of the obligation for management and maintenance of the land falling upon the Township without the consent of the Board of Supervisors.
- B. Required open space maintenance. Upon default by any owner, homeowners' association, conservation organization, or other entity responsible for maintenance of designated open space and/or associated facilities, where such maintenance is required under the terms of the open space management plan, homeowners' association or condominium documents, any subdivision and/or land development plan for the property, the zoning approval for the property, or under any applicable requirements of any Township ordinances, permits, or approvals, or where such maintenance is otherwise necessary to abate a nuisance, emergency, hazard or other condition threatening persons or property or the public health, safety or welfare, the Township may, but shall not be obligated to, take the following actions:
1. Upon thirty (30) days' advance written notice to the person, association or entity responsible for such maintenance (or any such lesser period as may be specified in the notice in instances of emergency) and the failure of the responsible individual, entity or association within such thirty (30) day period (or such lesser period in the event of an emergency) to perform the necessary maintenance and otherwise remedy the condition set forth in the Township's notice, to enter upon the open space, accessing the same through any other lands of such entity, association or individual as may be necessary, to perform such maintenance and take any other action necessary to correct the condition provided in the Township's notice.
  2. Any and all costs incurred by the Township in connection with such notice and maintenance shall be paid by the responsible individual, entity, or associated within ten (10) days after written demand by the Township. Upon failure of the responsible entity, association or individual to pay such costs by the time required, there shall be added thereto interest at the rate of fifteen percent (15%) per annum as well as all costs incurred by the Township in collection thereof.
    - a. All such costs of maintenance, remediation, notices and collection, including court costs and attorney's fees, shall constitute a municipal lien and be enforceable as such against the responsible entity, individual or association.
    - b. Such lien shall extend to all property of such individual, entity or association within the development containing the affected open space.
    - c. In the case of a homeowners' association, such lien shall apply, pro rata, against all lot owners who are members of the association, in addition to applying to the affected open space.

3. The performance of all work and the installation of all materials necessary to bring the common facilities into compliance with the regulatory standards applicable to said common facilities at the time of its conveyance or transfer shall occur.

**SECTION 240-1708. OPEN SPACE PERFORMANCE BOND**

Article XX standards for open space, green space, and common facilities shall apply.