Appendix D

Model Mandatory Dedication Ordinances

The following model mandatory dedication ordinances were developed by the Adams County Planning Commission, Adams County, PA and referenced in the Pennsylvania Department of Conservation and Natural Resources and Pennsylvania Land Trust Association publication: Public Dedication of Land and Fees-in-lieu for Parks and Recreation. http://www.dcnr.state.pa.us/brc/publications/Pubs/PubDedicationofLand.pdf and made available through the Pennsylvania Land Trust Association website http://conserveland.org/lpr/library?parent_id=23144. A complex ordinance and simple ordinance are provided.

MODEL ORDINANCE PROVISIONS FOR THE DEDICATION OF LAND FOR PARKS, OPEN SPACE, AND/OR GREENWAYS OR CASH IN LIEU OF LAND

Local ordinances for mandatory recreation dedication or environmental protection, like all other legal documents, can be simple or complex to administer; strict or loose in definition, appropriate for one municipality and not another. An acceptable approach for a municipality considers the time, effort, and required training necessary to administer the ordinance and the prevalence of the feature being preserved (e.g., steep slopes, streamside buffers). For instance, a small, rural township with only a part-time zoning administrator may wish to adopt a simpler approach to land preservation than a thriving city with a full-time staff of zoning and code enforcement officials. Also, a municipality with very flat land may not need steep slope regulations. The following ordinances illustrate several approaches which Adams County municipalities may take in helping to develop the local and county open space system.

COMPLEX MODEL ORDINANCE FOR MANDATORY RECREATION DEDICATION

AN ORDINANCE OF _____, ADAMS COUNTY, PENNSYLVANIA, AMENDING _____ SUBDIVISION AND LAND DEVELOPMENT ORDINANCE *TO REQUIRE PUBLIC DEDICATION OF LAND, THE* PAYMENT OF FEES IN LIEU THEREOF, THE PRIVATE PRESERVATION OF LAND, OR A COMBINATION, FOR PARK OR RECREATION PURPOSES AS A CONDITION PRECEDENT TO FINAL PLAN APPROVAL.

IT IS HEREBY ENACTED AND ORDAINED by the _____, of _____, Adams County, Pennsylvania that the Subdivision and Land Development Ordinance, Ordinance No. _____, enacted _____, as amended, is hereby amended as follows:

SECTION
610 PARK, OPEN SPACE AND GREENWAY PROVISION

Comment: The section numbering system may differ for each municipality. The 600 series was chosen here solely to illustrate the division of subsections.

610.01 GENERAL

This Section applies to proposals that would create new residential and non-residential development. The purpose of this Section is to implement Section 503(11) of the Pennsylvania Municipalities Planning Code and thereby provide needed parks, open space and greenways.

This Section 610 is based on the conclusions and recommendations in the _____ Parks and Open Space Plan dated _____ which the Municipal governing body has officially adopted as the _____ official Recreation Plan.

610.02 MANDATORY DEDICATION OF LAND

A. Land shall either be dedicated to the Municipality for parks, open space and/or greenways or an alternative action shall be taken from among the choices in Section 610.03 under either one of the following two situations:

1. A proposed land development or submission that creates one or more new dwelling units shall dedicate a minimum of _____ acres of land per dwelling unit to the Municipality.

2. A proposed land development or subdivision that creates one or more commercial, industrial or other non-residential principal uses and that involves a total area of 2 acres or more, excluding public and private schools, shall dedicate a minimum of ___% of the proposed development's total area to the Municipality.

B. The required park, open space and/or greenways associated with a proposed residential or non-residential development shall be distributed as follows:

1. PRIMARY RECREATION SPACE shall consist of a minimum of 70% of the total required mandatory dedicated acres for the proposed project. Primary Recreation Space shall not include any of the natural features that comprise "Greenway or Natural Resources Space" (see Paragraph 2. below).

Since the primary purpose of the Primary Recreation Space is for active recreational pursuits, this land should be relatively flat. Therefore, the following guidelines shall be used:

A minimum of 1/2 of the Primary Recreation Space shall have slopes of 5% and under and the remaining 1/2 of the space shall have slopes of 10% or under.

2. GREENWAY OR NATURAL RESOURCE SPACE may consist of a minimum of 30% of the total required mandatory dedicated acres for the proposed project. Greenway or Natural Resource Space may include floodplains, wetlands, steep slopes greater than 10%, storm water detention areas that are unusable for recreation as well as Primary Recreation Space.

610.03 MANDATORY DEDICATION ALTERNATIVES

The applicant may use one of the following alternatives to mandatory dedication, provided the Municipality's governing body approves:

A. Construct new and/or improve existing recreation facilities;
B. Pay a fee-in-lieu of land dedication;
C. Guarantee the private reservation and maintenance of parkland, open space and/or greenway; or,
D. Provide a combination of the above.

610.04 TOTAL OR PARTIAL FEE IN LIEU OF DEDICATION

Any of the alternatives in Section 610.03 must be at least equal to the pre-development fair market value of the two types of space (primary recreation and greenway or natural resource) which would have been otherwise required for dedication, including:

A. Primary Recreation Space (required acreage x value = $_____) which should equal the value of the tract of land of the proposed development project or similar land within the zoning district in which the tract is located.

B. Greenway or Natural Resource Space (required acreage x value = $_____) which should equal the value of the tract of land of the proposed development project or similar land within the zoning district in which the tract is located.

As an alternative, the Municipality may establish an annually updated fair market value for land associated with A.) Primary Recreation Space and for the B.) Greenway or Natural Resource Space within the Municipality or within each zoning district.

The determination of the fair market value of the two types of space (primary recreation and greenway or natural resource) shall be the responsibility of the applicant and shall be acceptable to the governing body of the Municipality. If the Municipality should dispute the applicant's fair market value, it may either retain a certified appraiser at the applicant's cost to verify and/or adjust the applicant's fair market value to the appraiser's value, or it may require mandatory dedication of the required acreage and/or a portion thereof and the remaining portion amount in fee-in-lieu of dedication.

610.05 PARKLAND CAPITAL RESERVE AND ACQUISITION FUND

The applicant shall pay all fees in lieu of land dedication to the Municipality. Upon receipt of the fees, the Municipality shall deposit said fees in an interest-bearing account. This account shall be separate from other municipal accounts and shall be clearly identified for the purpose of funding parkland acquisition and/or development of recreation facilities. Interest earned on all monies deposited in such accounts shall become funds of that account. Funds from such accounts be expended at the discretion of the Municipality's elected officials in properly allocable portions of the cost incurred to acquire land and/or design, construct or acquire the specific recreation facilities that will benefit the subdivision or and land development for which they were collected. Fees deposited to this account shall be administered as required by the Pennsylvania Municipalities Planning Code.

610.06 CASH FEE PAYMENTS IN LIEU OF DEDICATION AND EXPENDITURE

The fees shall be paid prior to recording of the Final Plan, unless the applicant agrees, as part of a legally binding development agreement, to pay the required fees prior to the issuance of each building permit for development. If requested by any person who paid any fee under this section, the municipality shall refund such fee, plus interest accumulated thereon from the date of payment, if the municipality has failed to utilize the fee paid for the purposes set forth in this section within three years from the date such fee was paid. If a developer chooses to pay such fees in phases, then such fees shall not have been considered to be fully paid for purposes of this time limit until three years after the last payment is made.

610.07 MUNICIPAL FUND REIMBURSEMENT OR MUNICIPAL PARKS AND OPEN SPACE IMPROVEMENTS OR ACQUISITION

From time-to-time a Municipality may purchase land for parks, greenways, open space and/or improve existing parks and greenways in or near the area of actual or potential subdivisions and/or

developments. If a Municipality does undertake such action within a distance of 1 and ½ miles, subsequent park, greenway and open space land dedications within that area may be a cash fee in-lieu-of land dedication and be used to reimburse the Municipality's actual cost of acquiring and/or developing such land for parks, greenways or open space. Once the Municipality has been reimbursed for all such park, greenway and open space actions within this area, this subsection shall cease to apply and the other subsections of this section shall remain applicable.

610.08 PRIMARY RECREATION SPACE DESIGN REQUIREMENTS

In general, Primary Recreation Space and related open spaces to be set aside and provided for in this section shall include areas for active recreational pursuits. Accordingly, the following design requirements shall apply:

A. The Primary Recreation Space shall be reasonably located so as to serve all of the residents or users of the subdivision or land development;

B. The site(s) shall be located and designed so that safe and convenient access shall be provided to all existing and proposed users. Additionally, each site shall have at least one vehicular access area that is a minimum of ___ feet in width;

C. The site(s) shall be sized and configured so as to accommodate its intended uses. Sufficient lot width/depth dimensions shall be provided so as to accommodate, where practical, ballfields, courts and other open play areas. Furthermore, should a development be proposed at a location contiguous to existing parkland, dedicated parklands should be provided, where practical, as an expansion of the existing park;

D. The site(s) shall have suitable topography and soil conditions for use and development as active play areas. A minimum of ½ of the primary recreation space shall have slopes of 5% or under and the remaining ½ of the space shall have slopes of 10% or under. The area of the site considered as the Primary Recreation Space shall be free from floodplains, wetlands, slopes of over 10% and storm water detention facilities that are not usable for recreation;

E. The site(s) shall be located and designed to conveniently access public utilities, which may be extended by the developer, including sanitary sewer, water and electric service. However, no part of an overhead utility easement or any above ground protrusion of an underground utility shall be permitted within the area proposed for active play areas on the site;

F. No part of the site(s) shall be a part of any other required setback, yard, buffer and/or open space required for any adjoining lots or uses as regulated by the Municipality's Zoning Ordinance;

G. The site shall comply with any applicable design, orientation, size and location guidelines in the Municipality's Recreation, Parks and Open Space Plan and/or Official Comprehensive Plan.

610.09 GREENWAY AND NATURAL RESOURCE SPACE DESIGN REQUIREMENTS

In general, Greenway and Natural Resource Space and related open spaces to be set aside and provided for in this section shall include areas for lineal greenways. These corridors of open space provide ways for people to gain access to residential and non-residential areas, parks, schools, historic sites, town centers,

neighborhoods, rural areas and related human settlement points as well as access to water, forests, meadows and other unique natural features and related open space for recreational pursuits.

Some greenways will be for walking, hiking, jogging, biking, horseback riding and even canoeing. Others will be simple and untouched as a stretch of stream bank left wild. Whether developed or not, greenways are exceptional for recreation, education, environmental preservation and important open space corridors that people may use to reach community resources. Accordingly, the following design principles shall apply:

A. GREENWAY AND NATURAL RESOURCE PLANNING AND DESIGN PRINCIPLES - The developer and Municipality shall use the following principles to plan for greenways and natural resource areas:

- Provide greenways along natural areas such as creeks, wetlands, floodplains and edges of waterbodies,
- Provide greenways along ridgelines with dramatic views,
- Provide greenways along utility easements, rights-of-way and other man-made linear corridors, such as abandoned railroad beds and underground pipelines,
- Provide greenways along highway and street rights-of-way,
- Provide greenways which incorporate parks, schools, urban pedestrian ways and plazas, especially in urban centers with limited parking, traffic congestion and more dense development,
- Provide greenways which incorporate existing pathways, bike routes, trails and sidewalks,
- Provide greenways within expanded buffer areas between different types of land uses,
- Provide greenways which interconnect and loop, giving interest for walkers, bikers and other users,
- Provide greenways which minimize road crossings, especially along major highways with high traffic volumes and fast-moving traffic. When necessary, consider using streets with limited traffic.

B. The Greenway and Natural Resource Space shall be reasonably located so as to serve all of the residents or users of the subdivision or land development.

C. The site(s) shall be located and designed so that safe and convenient access shall be provided to all existing and proposed users. Additionally, each site shall have at least one vehicular access area that is a minimum of twenty-four (24) feet in width.

D. Actual dedications of greenways and natural resource areas shall have a minimum width of fifty (50') unless circumstances prohibit this width) and, if dedicated to a Municipality, must be approved by the elected officials.

E. Any Greenway and Natural Resource Space shall conform to the goals of the municipal recreation, parks and open space plan and official comprehensive plan.

F. The minimum right-of-way width of an easement containing a trail which crosses private land shall be twenty (20') feet. Easements may be dedicated to the Municipality, the County or to another organization(s) which, in the judgement of the Municipality's elected officials, is/are appropriate. In all cases, however, such easements must provide for public use.

G. All walkways, bikeways or other accessways must have a minimum vertical clearance of not less than ten (10) feet. Walkways should have a minimum width of not less than five (5) feet. Bikeways should have minimum width of not less than 10', with 5' fall away zones.

H. Greenway and Natural Resource Space may include floodplains, wetlands, steep slopes greater than 10% and storm water detention areas that are not usable for recreation purposes, as well as Primary Recreation Space. Any walkway, bikeway, trail or other man-made features or use areas may be located in a wetlands area only after Municipal and State approvals.

SIMPLE MODEL ORDINANCE FOR MANDATORY RECREATION DEDICATION

607. *OPEN SPACE AND RECREATION AREAS AND FEES*

A. *Intent.*

1. To provide adequate open spaces, recreational lands and recreational facilities to serve new residents of new developments, for both active and passive recreation.

2. To recognize and work to carry out the officially adopted _____ *Parks, Recreation and Open Space Plan.*

B. *Applicability.* This section shall apply to any subdivision or land development for which a preliminary plan or a combined preliminary/ final plan is submitted after the enactment date of this amendment.

1. This section shall not apply to plans that the Governing Body determines only involve clearly minor adjustments or corrections to an approved preliminary plan or clearly minor adjustments or corrections to a preliminary plan that was before the Governing Body for consideration at the date of the adoption of this amendment.

C. *Limitations on Use of Fees.*

1. Any fees collected under this section shall be placed within an interest-bearing account and shall be accounted for separately from other Municipal funds.

2. To ensure that the lands and facilities are accessible to the residents and employees of the developments that paid fees towards their cost, the attached "Recreation Fee District Map" designates "Recreation Fee Districts." Any fees collected under this section shall only be expended within the same Recreation Fee District as the subdivision or land development that contributed the fees.

3. Such fees shall only be used for the following: acquisition of public open space, development of public recreational facilities, landscaping of public open space and closely related engineering and design work.

4. Unless the Governing Body identifies fees for a particular set of facilities or particular recreation area, then the fees shall be used for the further development of the _____ Recreation Area as a generally centrally located recreation area providing programs and facilities for the entire Municipality.

D. *Land Dedication.* Any subdivision or land development regulated under this Section 607 shall be required to dedicate the specified amount of common open space, unless the Governing Body determines that such land in that location would not serve a valid public purpose, in which case recreation fees-in-lieu of land shall be required.

1. Generally, it is the intent of this Section that developments of five or fewer dwelling units that do not include land that is adjacent to existing publicly-owned land shall be required to pay a recreation and open space fee in lieu of dedicating land. However, if the applicant does not agree to pay such fees, then land shall be required to be dedicated.

2. The land and fee requirements of this section shall be based upon the number of new dwelling units that would be permitted on the lots of a subdivision or land development after approval.

3. Prime Open Space. For the purposes of this section, the term "Prime Open Space" shall mean land proposed to be dedicated as common open space that would meet all of the following standards:

   a. less than 6 percent slope,
   b. not a "wetland" under Federal and/or State regulations,
   c. be part of a contiguous tract of at least 2 acres (which may include existing adjacent common open space) and
   d. not be within the "100 Year Floodplain" as defined by official floodplain maps of the Township.

4. Amount of Common Open Space. A subdivision or land development shall be required to dedicate the following amounts of common open space for each permitted new dwelling unit, unless the Governing Body determines that recreation fees in-lieu of the open space would be more in the public interest.

Percentage of the Total Required Common Open Space that Would Meet the Definition of "Prime Open Space"	Minimum Required Common Open Space Per Permitted Dwelling Unit
0% to 25.0%	1,500 square feet
25.1 to 75.0%	1,250 square feet
75.1% to 100%	1,000 square feet

E. *Fees for Residential Development.* If the Governing Body determines that a land dedication within a proposed subdivision or land development would not be in the public interest, the applicant shall be required to pay fees-in-lieu of dedicating open space. This fee shall be $900 per permitted dwelling unit, unless these fees are revised by later resolution or official fee schedule of the Governing Body.

F. *Fees for Business Development.*

1. Intent- To recognize that the development of employers in the Municipality creates significant demand for local recreational facilities, such as athletic fields, volleyball courts and picnic areas.

2. Any new business subdivision or land development shall be required to pay a recreation fee of $ for each acre within such subdivision or land development that is intended for new business uses. This amount of the fee shall apply unless a different fee is established by later resolution or official fee schedule adopted by the Governing Body.

3. The fee shall be based upon the nearest one-half acre. (For example, if a fee of $1,000 per acre is currently in place, a 2.5 acre business use would pay a fee of $2,500). No fee shall be required for business subdivisions or land developments involving less than 1/2 acre of land for new business uses.

4. See possible modifications of fees in Section 607.K.

G. *Decision on Land vs. Fees.* The Governing Body shall determine whether a land dedication or the payment of fees shall be required. This determination should, but is not required to, be made at the time of sketch plan review. The Municipality should, at a minimum, consider the following:

a. Whether the land in that location would serve a valid public purpose.
b. Whether there is potential to make a desirable addition to an existing recreation area.
c. Whether the proposed land would meet the objectives and requirements of this section.
d. Whether the area surrounding the proposed development has sufficient existing recreation and open space land, and whether it is possible for pedestrians and bicyclists to reach those lands.
e. Any recommendations that may be received from the Planning Commission, the Municipal Engineer, the local School Board or School District staff, and the Municipal Parks and Recreation Board.
f. Any relevant policies of the Municipal Parks, Recreation and Open Space Plan.

H. *Land to be Dedicated.*

1. Land required to be dedicated shall be suitable for its intended purpose, in the determination of the Governing Body. The applicant shall state what improvements, if any, that he/she intends to make to the land to make it suitable for its intended purpose, such as grading, landscaping, or development of trails. Such land shall be free of construction debris at the time of dedication.

2. Required common open space shall be dedicated to the Municipality, unless the Governing Body agrees to accept a dedication to any of the following: the local school district, Adams County, a homeowner association, or an environmental organization acceptable to the Governing Body. In the case of a rental development, the Municipality may permit the common open space be retained by the owner of the adjacent residential buildings.

3. If required common open space is to be owned by a homeowner association, the developer shall be required to establish such association in a form that requires all property-owners with the development to annually contribute to the maintenance of the common open space. Any homeowner association agreements regarding required common open space shall be subject to acceptance by the Governing Body, based upon review by the Municipal Solicitor. The provisions of Section 703(f) of the State Municipalities Planning Code should serve as a model for such agreement.

4. Any required common open space dedication shall include deed restrictions to permanently prevent its development for buildings, except buildings for non-commercial recreation or to support maintenance of the land.

5. Priority shall be given to dedication of land that would be suitable for a) a new community park in the _____ portion of the Municipality, or b) would preserve woods, steep slopes or other important natural features or land along a creek, or c) that would add needed land onto existing public recreation lands.

Comment: Here, a municipality may designate preferences to open space which would contribute to local or county greenways, preserve streamside buffers, or other local priorities.

6. Land that is not suitable for active or passive recreation shall not be accepted as part of a required dedication, including areas within a stormwater detention basin that could not serve recreation purposes. Portions intended for active recreation shall be well-drained, of less than 4 percent average slope and not require filling in of a wetland for use.

7. Common open space within a subdivision or land development shall be contiguous, except as may be specifically exempted by the Governing Body, and shall have adequate access for maintenance and for pedestrians.

8. Other Ordinances. Any required land dedication under this Section shall be in addition to any land dedication or improvement requirements of any other Municipal ordinance or resolution.

9. Lands Close to Buildings. For the purposes of this section, no land shall be used to meet the minimum common open space requirements of this section if such land is within: a) 15 feet of any building or b) within 15 feet of a parking area of more than 6 parking spaces (other than parking areas specifically developed to serve the open space). This specifically includes, but is not limited to, open space surrounding buildings in a development of apartments or townhouses.

10. Residual Lands. If only a portion of a larger tract of land is currently proposed to be subdivided, or the applicant owns one or more adjacent tracts that are not currently proposed to be subdivided, the applicant shall provide a sketch of a possible future land dedication on these adjacent lands in case they would be developed in the future.

11. Coordination With Future Adjacent Dedication. The Governing Body may require that a required land dedication within a property currently being subdivided be placed along an edge of the property so that it may, in the future, be combined with an open space dedication on the edge of an adjoining property when that adjoining property is subdivided or developed.

I. *Combination of Land and Fees.* Upon mutual agreement of the Governing Body and the applicant, the Municipality may accept a combination of common open space and fees-in-lieu of land to meet the requirements of this section for a residential subdivision or land development. This combination shall be based upon the following: the amount of common open space would be based upon a certain number of dwelling units and the fee amount would be based upon the remaining number of dwelling units.

J. *Timing of Fees.* Fees required under this section shall be paid prior to the recording of the final plan, except as follows:

1. If the required fee would be greater than $_____ and the applicant and the Municipality mutually agree to provisions in a binding development agreement to require the payment of all applicable recreation fees prior to the issuance of any building permits within each clearly defined phase of the development, then the fees are not required to be paid prior to recording of the final plan but may instead be paid within the requirements of that development agreement.

2. If the applicant agrees to pay such fees in installments, then all such fees shall not be considered to be "paid" for the purposes of any applicable time limitations for utilization under the State Planning Code until all such fees are paid in full, including all installments and phases.

K. *Fee Modification Process.*

1. An applicant may seek modification to the required amount of a recreation fee under this section, following the "Modifications/Exceptions" procedures of Section _____ of this Ordinance. In such case, the full burden of proof, based upon relevant data and qualified professional testimony, shall be upon the applicant to clearly prove to the satisfaction of the Governing Body that the required fees under this section would:

   a. For a residential development, be disproportionate compared to the current market value of the common open space that would otherwise be required to be dedicated,

   b. For a business development, would be disproportionate compared to the amount of impact on recreation facilities and common open spaces that the employees of the development would have upon the Municipality.

2. An applicant may also seek a modification of the requirements of this section under the procedures of Section _____ by offering to construct substantial permanent recreation facilities within the proposed subdivision or land development or on adjacent public open space that the applicant clearly proves to the satisfaction of the Governing Body will substantially meet the recreation needs of the residents and/or employees, as applicable, of the development.

MODEL ORDINANCE PROVISIONS FOR STREAMSIDE BUFFERS

604. SETBACKS FROM SURFACE WATERS.

604.A. *Purposes.* To protect the quality and purity of surface waters, preserve physical access to surface waters in case of future public or semi-public acquisition, minimize erosion and sedimentation, preserve the natural stormwater drainage system of the area, conserve sensitive wildlife and aquatic habitats, preserve vegetation along waterways so as to retard soil erosion and reduce pathways for pollutants, and provide for setbacks that can be used as required yard areas for a land use.

604.B. *Setbacks From Major Surface Waters.*

1. No off-street parking, loading or unloading area, or commercial or industrial storage or display area shall be located within 75 feet of the top of the bank of the _____ River or within 50 feet of the top of the bank of any other major surface water. See the municipal floodplain map in case a wider area is regulated under the Floodplain Ordinance. The top of the bank of the surface water shall be determined by the Municipal Engineer, in case of dispute.

1. If the required fee would be greater than $_____ and the applicant and the Municipality mutually agree to provisions in a binding development agreement to require the payment of all applicable recreation fees prior to the issuance of any building permits within each clearly defined phase of the development, then the fees are not required to be paid prior to recording of the final plan but may instead be paid within the requirements of that development agreement.

2. If the applicant agrees to pay such fees in installments, then all such fees shall not be considered to be "paid" for the purposes of any applicable time limitations for utilization under the State Planning Code until all such fees are paid in full, including all installments and phases.

K. *Fee Modification Process.*

1. An applicant may seek modification to the required amount of a recreation fee under this section, following the "Modifications/Exceptions" procedures of Section _____ of this Ordinance. In such case, the full burden of proof, based upon relevant data and qualified professional testimony, shall be upon the applicant to clearly prove to the satisfaction of the Governing Body that the required fees under this section would:

   a. For a residential development, be disproportionate compared to the current market value of the common open space that would otherwise be required to be dedicated,

   b. For a business development, would be disproportionate compared to the amount of impact on recreation facilities and common open spaces that the employees of the development would have upon the Municipality.

2. An applicant may also seek a modification of the requirements of this section under the procedures of Section ____ by offering to construct substantial permanent recreation facilities within the proposed subdivision or land development or on adjacent public open space that the applicant clearly proves to the satisfaction of the Governing Body will substantially meet the recreation needs of the residents and/or employees, as applicable, of the development.