

Trails Easements in Kennett Township

Purpose of this Report

Kennett Township has worked actively to promote the use of conservation easements and land-use planning to protect natural and visual resources, and encourage the existence of open space free from commercial and residential buildings. When conservation easements are established, an agreement is established between the property owner and the Township that stipulates a number of contractual agreements. One of these agreements can be the establishment of a public trail easement on the property being conserved. Additional easements are sometimes established through the process of reviewing and approving applications for land development. These easements are also established as a result of the Comprehensive Plan, Land-Development and Subdivision Process, and via the establishment of Community Open Space.

Establishment of a trail easement implies a number of responsibilities for both parties, and must be considered carefully. The Environmental Advisory Council (EAC) has researched several topics related to the establishment of public-trail easements:

1. Items related to trails enshrined in the ordinances.
2. Available resources identifying existing trails and trail opportunities.
3. Financial implications of establishing trail easements on private land.
4. Existing process for establishing trail easements.

This report presents the results of these inquiries and lists recommendations for the Township to consider.

1. Items related to trails enshrined in the ordinances.

The EAC examined the ordinances to determine how trails are defined, and if there are any provisions that explicitly encourage or discourage the development of trails and trail easements.

How is a “Trail” defined in Kennett Township?

Trails are defined in the Subdivision and Land Development (SALDO) ordinance under [“Article II. Definitions; Word Usage”](#):

TRAIL

A linear route used for nonmotorized (sic) recreation or transportation purposes, such as walking, jogging, hiking, bicycling or horseback riding. Depending on their intended use, trails may be paved or unpaved. (See also "path.")

Are there any places where trails are explicitly prohibited in Kennett Township?

Most language in the Zoning ordinance designates that trails are explicitly permitted in a number of protected areas throughout the Township including flood districts, wetland margins, riparian buffers, and community open space.

[Article XVI. FH Flood Hazard District](#)

[§ 240-1604. Special requirements for FW, FF and FA areas.](#)

[A.](#) Floodway District (FW). In the Floodway District (FW), any new construction and/or development that would cause any increase in one-hundred-year flood heights shall be prohibited.

[\(1\)](#) Permitted uses. In the Floodway District (FW), the following uses and activities are permitted, provided they are in compliance with the provisions of the underlying district and are not prohibited by any other ordinance, and provided that they do not require structures, fill or storage of materials and equipment:

[\(b\)](#) Public and private recreational uses and activities, such as parks, day camps, picnic grounds, boat launching and swimming areas, hiking and horseback riding trails, wildlife and nature preserves, game farms, fish hatcheries, and hunting and fishing areas;

[Article XVIII. Natural Resource Protection Standards](#)

[D.](#) Wetland margin standards.

[\(1\)](#) Resource protection standards.

[\(a\)](#) With the exception of those uses or activities listed below, no more than 20% of a wetland margin shall be regraded, filled, built upon, or otherwise altered or disturbed:

[\(2\)](#) Provision for trail and trail access;

[E.](#) Watercourse and riparian buffer standards.

[\(1\)](#) Resource protection standards.

[\(a\)](#) Zone One. With the exception of those uses or activities listed below, no woodland disturbance or other land disturbance shall be permitted within the Zone One riparian buffer:

[\[2\]](#) Provision for trail and trail access;

[Article XVII. Open Space Design Option](#)

[\(5\)](#) Except as may otherwise be specified in this article, development shall not be permitted in the restricted open space at anytime. Where disturbance of restricted open space 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.

[\(2\)](#) 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:

[\(e\)](#) Neighborhood open space uses such as village greens, commons, picnic areas, community gardens, trails, and similar low-impact passive recreational uses, specifically excluding motorized off-road vehicles, rifle or archery ranges, and other uses of similar character and potential impact as determined by the Board of Supervisors.

When development plans are being prepared, are their studies or recommendations submitted that can indicate if trails are desirable on the property and across neighboring properties?

The SALDO ordinance prescribes that existing trails on a site be identified as part of the Natural and Cultural Resources Scenic Analysis Plan. The Supervisors can waive the requirement or preparing this plan if it is deemed unnecessary for the purpose of collecting information necessary to comply with the ordinance. As part of any local traffic study, the applicant must supply a determination of pedestrian traffic in the area and improvements that could be made to facilitate pedestrian traffic.

[§ 206-403. Preliminary plan requirements.](#)

[D.](#) Natural and cultural resources site analysis plan. Information required in accordance with this subsection shall be depicted upon a copy of and at the same scale as the base plan. Tabular and/or narrative information may be presented as plan notations or on separate sheets where insufficient space is otherwise available.

[\(2\)](#) The natural and cultural resources site analysis plan shall depict the following information for all affected areas and any area within 100 feet of such affected areas, as defined in [§ 206-403B\(2\)\(b\)](#) above. The plan shall include all natural resources protected by Article XVIII of the Zoning Ordinance, including, but not limited to, the following:

(l) All historic resources, including districts, sites, structures, ruins, walls, transportation traces (trails and abandoned roads), and quarry sites shall be identified and described, based upon available information and mapping, including historic resources identified on the Historic Resources Map and/or upon on-site investigation

§ 206-405. Impact studies.

C. Local traffic impact study.

(2) Minimum contents. As a minimum, the impact study should include the following:

(l) A determination of pedestrian traffic, based on the site's location to other pedestrian trails or amenities, including, but not limited to, places of employment, recreation or commercial uses, and a description of what improvements will be made to facilitate pedestrian circulation in light of other traffic and circulation issues.

When a trail is constructed in the Township, what design standards apply to its construction and maintenance?

The SALDO ordinance defines design criteria for trails, including recommended widths, surfacing materials, placement for facilitating circulation within and among lots, and requirements for a maintenance plan.

Article V. Design Standards

C. Trails and paths.

(1) The applicant shall preserve existing trails and paths as necessary and desirable to achieve the following:

(a) Logically continue, link or expand existing trails and paths on, across and abutting the site.

(b) Provide pedestrian access to existing or anticipated parks and recreation areas, community facilities, and commercial areas.

(c) Encourage the creation of an interconnecting trail network within and beyond the Township borders.

(d) Implement the trail recommendations of the open space and recreation plan contained in the Kennett Township Comprehensive Plan 2004, as amended, or other trail planning efforts undertaken or supported by the Township.

(2) The trail design, construction and materials shall be suitable for the function of the trail and consistent with generally accepted principles of trail design and construction. Trails shall have a durable surface consisting of materials not subject to erosion and appropriate for the anticipated trail use. Trail design shall be subject to Township approval.

(3) Depending on the proposed and anticipated volume of use, trails and paths shall generally be a minimum of six feet to 10 feet in width and, at the option of the applicant, shall be located adjacent to existing or proposed lot lines or in such manner as to minimize any obstruction to the development. Existing paths may be relocated if a connection with a path on an adjoining property is thereby established.

(4) To facilitate circulation, pedestrian paths may be required to serve the interior of developments and link to outside trail networks. Such paths shall be a minimum of four feet in width and shall be of a durable surface as described in Subsection C(2) above and satisfactory to the Board. Where the paths are not within a street right-of-way, a separate right-of-way at least 10 feet wide shall be designated on the subdivision or land development plan. Pedestrian paths shall be designed in compliance with the Americans with Disabilities Act (ADA) requirements. If ADA requires a different minimum width than those stated above, the greater width shall prevail.

(5) The applicant shall provide a long-term maintenance plan that specifies the ownership and maintenance responsibilities for the trails and paths within the subdivision or development. Such plan will also note the means by which the trail or path will be permanently preserved. Where an open space management plan is required under § [240-1707](#) of the Zoning Ordinance, the trail maintenance plan may be included in that document.

Has the Township ever enshrined in an ordinance, an explicit direction to acquire land or land access through conservation easements for the purpose of (at least in part) of establishing publicly accessible trails?

The ordinance that established the land trust conservancy dictated the Supervisors could appropriate money to conserve and preserve interests on properties to achieve “open space benefits” for “the public benefit”. Given the explicit designation of trails as an acceptable use on community open-space lands, it is logical that the adoption of the Land Trust Conservancy ordinance designates that one possible purpose of a municipally funded conservation easement might be acquisition of right-of-way and construction of a public trail.

[Chapter 37. LAND TRUST CONSERVANCY](#)

[Article I. Enabling Ordinance](#)

[Adopted 6-19-1995 by Ord. No. 102]

§ 37-5. Powers.

A. Whenever the Township deems it to be for the public benefit of the Township, it may:

(1) Appropriate money to the local land trust for the acquisition or conservation and preservation of interests in real property for the purpose of achieving open space benefits, provided that an appropriation for the acquisition or conservation and preservation of interests in real property for the purpose of achieving open space benefits within a municipality other than the Township shall be made only pursuant to an intergovernmental cooperation agreement between the municipality within which the open space benefits will be achieved and the Township; and

(2) Transfer open space property interests to the local land trust and elect to accept any nominal consideration for the transfer it deems appropriate.

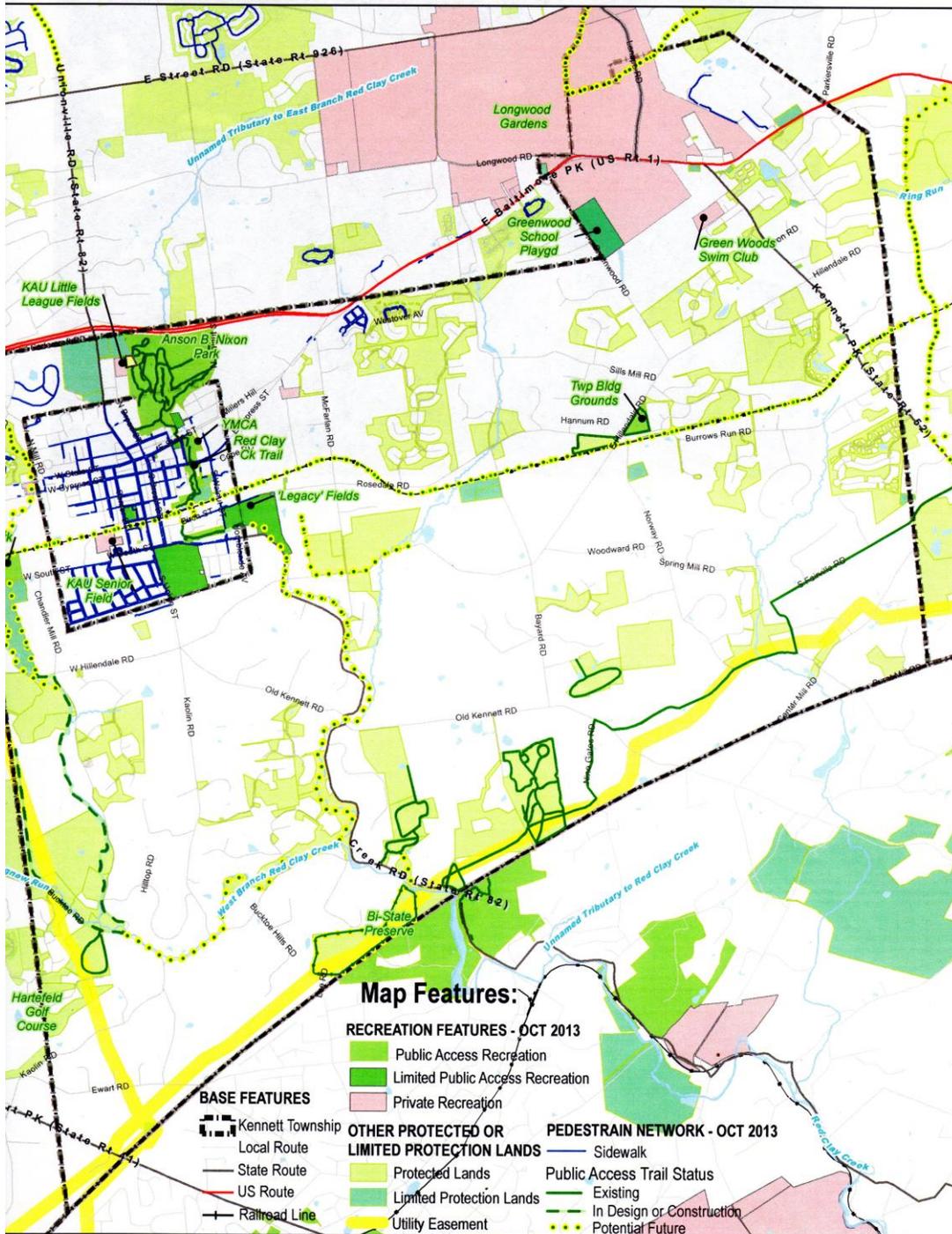
2. Available resources identifying existing trails and trail opportunities.

The current comprehensive planning process has produced a, Recreation and Trails map (12-1, included with this document) that shows the location of existing trail networks or trails under construction in the Township. The Red Clay Greenway plan also delineates existing trails and potential areas for joining trail networks. Both documents illustrate two general networks of public trail access (or potential access) in the Township:

- A. Networks in the western portion of the township that connect Kennett Borough to Anson Nixon Park to the north, and some elements that extend from the Borough to the intersection of Kaolin Road and Chandler Mill Bridge Road to the south.
- B. Networks in the southeastern portion of the township that are oriented around the Mason-Dixon Trail, and that also include Trails within the State Line Woods preserve and Marshall Mill preserve, and the Rt. 52 Bikeway.

Network A has the potential to eventually establish a walking path that connects the Borough to Yorklyn, DE. Network B ties into the Route 52 Bikeway which will connect Centerville DE to the village of Hamorton, and possibly Longwood Gardens.

There is also a “Designated and Open Lands Map of Kennett Township” produced by the Brandywine Conservancy that shows the location of eased land and undeveloped lands that could help to support a trail network.



5/2013 0 0.5 1 Miles

Map 12-1
Existing Parks, Recreation, and Trails
Kennett Township Comprehensive Plan

ally compiled for internal maintenance and developmental use by the County of Chester. Provide an index to parcels and for other reference purposes. Parcel lines do not represent the boundaries of premises. County of Chester, Pennsylvania makes no claims as to the completeness, accuracy, or timeliness of any data contained hereon, and makes no representation of any kind, expressed or implied, to the warranties of merchantability or fitness for a particular use, nor are any other warranties, expressed or implied, with respect to the information or data furnished herein.

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Draft of the Existing Parks, Recreation, and Trails map to be included in the next Township Comprehensive Plan.

3. Existing process for establishing trail easements.

The existing process for establishing trail easements in the Township is in transition. Based on what has been stated publicly in Supervisors meetings, up until two years ago, it was assumed that all conservation easements must have a trail easement included. Very few of these easements actually became useable trails, but they were established. The Township does not budget for trail maintenance outside of publicly owned properties. An easement on the Schmidt property two year ago was the first known instance where it was determined that there were no legal or other requirements for a trail easement to be established when a conservation easement is granted. Since that time, the process of determining if a conservation easement should include a trail easement has been determined through conversations with the landowner and the Township, to determine if a trail would actually be practical on the property and if the landowner is willing to accommodate it.

During the course of approving land-development applications, the Township occasionally seeks trail easements. The opportunity for this is particularly available when an application requires a conditional-use hearing. However, the process of deciding if trail easements are appropriate on a property is often somewhat arbitrary. For example, the Planning Commission recommended trail easements be a condition of approval for the Granite Ridge development, but the condition was not imposed by the Supervisors. Neither the Planning Commission or the Supervisors referenced existing plans or studies in their recommendation or decision; they were arrived at based on the members opinions of what was appropriate for the property.

There is currently no adopted plan in place to identify properties or corridors where establishing a trail easement would be beneficial for public or to help prioritize where land acquisition could contribute to a real or potential trail corridor.

To the best of our knowledge, no trail easement established by the Township on a property not owned by the Township, has included provisions for funding, planning, establishing responsibility for, and enforcing an agreement for maintenance of established trails.

4. Recommendations to refine the process for establishing trail easements.

Based on our review of the existing township policies, ordinances and available resources, we make the following recommendations to refine the process for establishing trail easements:

1. Separate conservation easements and trail easements. Because they require specific provisions regarding design, maintenance and enforcement, easements for trails should be established separately from conservation easements on private lands.

However, before this recommendation is adopted, the Township should determine if the conservation organizations they employ have any restrictions that prevent this type of arrangement. Regardless, separate conservation and trail easements should be considered the preferred method when establishing trail access on preserved lands.

2. Establish a committee to create a formal plan and map showing preferred routes for trail corridors and sidewalks in the Township. This committee should seek out regularly an incorporate public feedback on preferred routes for pedestrian access, as well as locations with safety and privacy concerns, and desirable destinations for sidewalks, trail networks and spurs. It is important to make this forum for information exchange open to all view points and not reflective only of participants with specific objectives. This committee should take advantage of existing background work that has been completed by public and private organizations interested in developing a trail network.

3. Plan and budget for trail corridor maintenance, with public input as to how expense is justified. Coordinating maintenance among multiple land owners is unwieldy and difficult to enforce. If the Township is going to adopt establishing a trail network as a significant goal, it should plan to take over primary responsibility for maintaining and monitoring the network, and assign the responsibilities to Township employees, or contract the maintenance to an organization or company with the resources and expertise necessary to complete the required work. This does not preclude the involvement of volunteer organizations in maintaining the trails.

4. Show all existing trail easements and sidewalks on a map so they can be reviewed for planning purposes. Maintain this map regularly with most recent information.

5.. Consider hiring an open-space program coordinator to run the business and planning side of establishing conservation and trail easements.

Under many circumstances, volunteer committees are not adequately equipped to efficiently address these often complex and time consuming issues. An experienced municipal employee could prove to be a valuable resource, particularly for a Township such as Kennett that has a sustainable budget and an identifiable organizational need. Some of the responsibilities an Open Space Director may assume could include:

- Grant writing
- Identification of viable trail and conservation opportunities
- Website development/general public relations (blogs, Facebook, other social media, etc.)
- Soliciting bids from contractors, land conservation organizations, appraisers, other necessary service providers
- Managing GIS/parcel database of municipal conservation/trail opportunities
- Landowner/community interface
- Collaborate with planning commission, EAC, LCAC and other Township committees

Moreover, most of the surrounding municipalities have similar needs. The municipalities could band together to hire one person to handle shared responsibilities across all borders. Alternatively, they could be employed by the Kennett Regional Planning Commission to coordinate these activities for all members of the Commission.

6. To fulfill the obligations of section 2.e of ordinance 106, and to broaden public input into the decision-making process for acquiring conservation and trail easements, the EAC and LCAC should meet to review every recommendation regarding the establishment of a conservation or trail easement.

7. If a comprehensive plan for a trail network is adopted, review the trail design standards in SALDO article V in relation to the plan's objectives. For example the recommendation for trail widths of six to ten feet may not be a good recommendation for a more extensive network as that width may not be possible along much of its length.