

ARTICLE 8

SLOPE CONSERVATION DISTRICT

800. PURPOSE.

The purpose of this chapter is to expand upon the community development objects associated with environmental protection and the preservation of natural resources adopted in Article II of Chapter 172, Zoning. Further, the provisions of this chapter are designed to encourage the sensitive treatment of hillsides and the related soil and vegetation resources in an effort to minimize adverse environmental impacts. The following objectives serve to complement these specific purposes and the overall purpose of this chapter:

- A. To conserve and protect slopes from harmful land disturbances such as excessive grading, landform alteration and extensive vegetation removal.
- B. To avoid potential hazards to property and the destruction of ecological balance which may be caused by increased runoff, flooding, soil erosion and sedimentation, blasting and ripping of rock, landslide and soil failure.
- C. To encourage the use of slopes for open space and other uses which are compatible with the preservation and protection of natural resources.
- D. To combine with other zoning requirements, as an overlay of the existing zoning ordinance as it may be amended from time to time, certain restrictions for slopes to promote the general health, safety and welfare of the residents of the Township.
- E. To permit only those uses that are compatible with development of slope areas in order to avoid accelerated erosion, soil failure, accelerated seepage or other conditions which may create a danger to life and/or property.
- F. To promote the ecological balance among those natural system elements, such as wildlife, vegetation and aquatic life, that could be adversely affected by inappropriate development of steep slope areas.
- G. To prevent development that would cause excessive erosion and a resultant reduction in water-carrying capacity of the watercourses which flow through or around the Township with the consequences of increased flood crests and flood hazards within the Township and to both upstream and downstream municipalities.
- H. To protect individual and adjacent landowners in the Township and/or other municipalities from the possible harmful effects of inappropriate grading and development on steep slope areas.
- I. To protect those individuals who choose, despite apparent dangers, to develop or occupy land with steep slopes.

- J. To promote the provision of safe and reliable accessways, parking areas and utility systems serving development on or around steep slope areas, where more sensitive grading and siting is essential.
- K. Pursuant to the Municipalities Planning Code, 53 P.S. § 10101 et seq., to assist in the implementation of pertinent state laws concerning erosion and sediment control practices, specifically Chapter 102 of the Clean Streams Law, P.L. 1978, and any subsequent amendments thereto, and to implement Article 1, Section 27, of the Constitution of the Commonwealth of Pennsylvania, which declares the right of the commonwealth's residents to clean air, pure water and to the preservation of the natural scenic, historic and aesthetic values of the environment.

801. DEFINITIONS.

As used in this chapter, the following terms shall have the meanings indicated:

CONSTRUCTION

The erection, addition, alteration, demolition, disturbance or removal of any building, structure or geographic feature.

DISTURB

To remove, strip, relocate, grade, excavate, cover, fill or otherwise directly or indirectly alter or destroy existing vegetative ground cover.

PERMISSIBLE DISTURBED AREA

That area which has been delineated on an approved subdivision, land development or conditional use plan as being land which may be disturbed subsequent to the plan approval upon issuance of a soil erosion and sedimentation control permit.

PERSON

Natural person, partnership, corporation, unincorporated association or other organization or entity.

STEEP SLOPE AND VERY STEEP SLOPE MEASUREMENT

Steep slopes shall be measured between three consecutive two-foot contour interval lines. The resultant slope is the ratio of the change in elevation to the horizontal distance as determined and measured between the above referenced three consecutive contour lines.

WOODED AREA

That area of land on which sufficient tree masses grow such that the branches of trees intertwine.

802. LAND USE IN SLOPE CONSERVATION DISTRICT.

No person shall use or alter any land in a Slope Conservation District if the intended use or alteration requires approval as a subdivision or land development conditional use or as a special use under Chapter 148, Subdivision and Land Development, and Chapter 172, Zoning, without first applying for and obtaining approval for such use as provided in Section 811. After being so

approved, no land within a Slope Conservation District shall be used without compliance with such approval and other applicable regulations.

803. CONFLICTS WITH OTHER PROVISIONS

This chapter is not intended to repeal, abrogate or impair any existing zoning or subdivision regulations or land development regulations, easements, covenants or deed restrictions, except that to the extent this chapter imposes greater restrictions, the provisions of this chapter shall prevail. Furthermore, nothing contained in this chapter shall repeal, alter or impair in any way the provisions of Chapter 138, Soil Erosion and Sediment Control; the Pennsylvania Department of Environmental Protection Clean Streams Law, Chapter 102, pertaining to soil erosion control; or any other applicable Township, county, state or federal laws and regulations.

804. SLOPE CONSERVATION DISTRICT

- A. An accurate topographic survey using elevation and distance based on an actual field survey by a registered engineer or surveyor and presented on a plan showing two-foot contour intervals with a horizontal scale of no more than 50 feet per inch shall be required of the applicant to more accurately define the district as specified in **Section 805**. Slope classifications and their mapping in the soil survey shall be used to determine when the more accurate topographic survey shall be required as part of a subdivision, land development or conditional use plan.
- B. The steep slope areas shall be comprised of areas with a difference of elevation over 7 1/2 feet over a horizontal distance of 50 feet based on a topographic survey showing two-foot contours.
- C. The very steep slope areas shall be comprised of areas with a difference of elevation over 12 1/2 feet over a horizontal distance of 50 feet based on a topographic survey showing two-foot contours.
- D. The Slope Conservation District Map shall be considered an overlay to the Township Zoning Map. The following provisions shall apply in a Slope Conservation District:
 1. The district will have no effect on the permitted uses within the underlying zoning district, except where such uses, intended to be located within the boundaries of the Slope Conservation District, are in conflict with the use regulations set forth in **Section 806**, in which case the latter shall apply.
 2. Should the Slope Conservation District boundaries be revised as a result of a legislative action or judicial decision, thereby removing lands from such district, the zoning requirements applicable to the land in question shall revert to the requirements of the underlying zoning district(s) without regard to the provisions of this chapter.

3. Should the zoning classification(s) of any parcel or any part thereof within which the Slope Conservation District is an overlay be changed as a result of legislative action or judicial decision, such change(s) in classification shall have no effect on the boundaries of the Slope Conservation District.
- E. If any area of steep or very steep slopes shall have been determined to be created by a prior earthmoving activity, including construction, development, agricultural or industrial operation, such man-made steep or very steep slope shall not be subject to compliance with the provisions of **Section 805** of these General Laws, nor the disturbance limitations provided in **Section 806**. The applicant and/or property owner shall carry the burden of establishing that the steep or very steep slopes were man-made and must submit historic documentation or a soil report in support. Such a determination shall be made by the Township Engineer. Slopes will be considered to be man-made if documentation meeting one of the following criteria can be provided:
1. A plan of sufficient detail which clearly depicts the construction of the steep or very steep slope which currently exists.
 2. Sufficient documentation that the steep or very steep slope was constructed for the purpose of supporting an existing or previously existing structure.
 3. A report from an independent certified soil scientist or professional geotechnical engineer that indicates that at least 70% of the in-situ soil within the proposed limit of disturbance and to a depth of three feet below the lowest proposed elevation has a soil classification of "made land" as defined by the United States Department of Agriculture, Soil Conservation Service, in the Soil Survey of Chester and Delaware Counties, and has not been naturally deposited.
 4. The final determination regarding the existence of man-made slopes will be made by the Township Engineer.

805. CONTOUR MAP; BOUNDARIES

- A. The soil classification maps referred to in **Section 804** shall be used as a guide for determining the boundaries of the Slope Conservation District.
- B. Any application for subdivision, land development or special use of land in a Slope Conservation District shall include a contour map with two-foot contour intervals on a horizontal scale of no more than 50 feet to the inch. The map shall separately delineate slopes less than 15%, between 15% and less than 25%, and slopes greater than or equal to 25%. The contour information on such map shall be derived from actual field topographic surveys which shall be referenced in the application.
- C. The contour map described in Subsection B hereof shall be reviewed by the Township Planning Commission and the Township Engineer. The applicant shall be required to follow all regulations of this chapter for those areas which reflect steep slope and very

steep slope conditions in conjunction with review of an application for use in a Slope Conservation District as provided in **Section 811**.

806. PERMITTED USES

Where this chapter is applicable as stated in **Section 802**, the following uses shall be permitted in Slope Conservation Districts:

- A. Areas of very steep slope (25% or greater).
 1. Uses permitted by right:
 - a. Agricultural uses that do not require cultivation, construction or the use of structures.
 - b. Conservation and recreational uses not requiring construction or the use of structures, such as parks; hiking and bridle paths, woodlands; nature sanctuaries, refuge and conservation areas; and, other such noncommercial conservation and passive recreational activities.
 - c. Utility easements and rights-of-way, including the installation of underground utilities.
 - d. Front, rear and side yard setbacks required by the underlying zoning district on any lot or tract.
 2. Uses permitted when authorized as a conditional use.
 - a. Conservation and recreational uses, including those requiring construction or the use of structures.
 - b. Cultivation and agricultural uses, including those requiring construction or the use of structures.
 - c. Sealed water supply wells.
 - d. Accessory uses and structures customarily incidental to uses described in Subsection A(1)(a) and (b) hereof.
 - e. Road or access driveways to provide access to a permitted use if the Board of Supervisors determines no alternative alignment or location is feasible.
 - f. Swimming pools.
 3. Prohibited uses and structures.

- a. Cut and fill, other than in association with any uses identified in Subsection A(1) hereof and in Subsection A(2) when authorized as a conditional use.
 - b. Soil, rock or mineral extraction.
 - c. Removal of topsoil.
 - d. On-lot sewage disposal systems.
 - e. Road and access driveways, except that roads and access driveways existing on the date of adoption of this chapter and access driveways for any lot in a subdivision which was recorded before the adoption date of this chapter shall be permitted.
 - f. Dumps, junkyards and other outdoor storage of refuse material and discarded or abandoned vehicles.
 - g. Any use not specifically identified in Subsection A(1) hereof or in Subsection A(2) hereof when authorized as a conditional use.
- B. Areas of steep slope (15% to less than 25%).
1. Uses permitted by right in Subsection A(1) of this section and swimming pools.
 2. Uses permitted when authorized as a conditional use.
 - a. Any use or structure identified in Subsection A(2) hereof.
 - b. Structure permitted in the underlying zoning district.
 - c. Stormwater management facilities.
 - d. Sanitary sewer and sewage pumping stations.
 - e. Accessory uses customarily incidental to any uses described in this subsection; and accessory uses customarily incidental to any uses permitted in Subsection B(1) hereof.
 - f. Road or access driveways to provide access to a permitted use if the Board of Supervisors determines no alternative alignment or location is feasible.
 3. Prohibited uses and structures.
 - a. Cut and fill, other than in association with any uses related to Subsections B(1) and (2) hereof.

- b. Soil, rock and mineral extraction.
- c. Removal of topsoil.
- d. Dumps, junkyards or other outdoor storage of refuse materials and discarded or abandoned vehicles.
- e. Any other use(s) or structure(s) not specifically identified in Subsections B(1) and (2) hereof.

807. DISTURBANCE OF GROUND COVER

Where this chapter is applicable as stated **Section 802**, the following shall apply:

- A. Permissible disturbed area.
 - 1. Except as provided in Subsection B hereof, no person shall directly or indirectly disturb vegetative ground cover on more than the following percentages of each classification of land within the Slope Conservation District of the subdivision, land development or conditional use when taken as a whole:

Maximum Permissible Slope Classification	Disturbed Area
Steep	15%
Very steep	5%

- 2. The above-referenced allowable percentages of disturbance do not apply if the area of steep slope disturbance is less than 500 square feet or the area of very steep slope disturbance is less than 200 square feet.
- B. The restrictions in Subsection A hereof shall not apply to disturbances of soil for agricultural or food production purposes.
- C. No person shall disturb vegetative ground cover in any Slope Conservation District without first having submitted to the Township and having obtained the Township's approval of a soil erosion and sedimentation control plan which satisfies the requirements of Chapter 138, Soil Erosion and Sediment Control, of this Code. Any person permitted to disturb vegetative ground cover pursuant to this section shall keep the amount of disturbed vegetative ground cover to an absolute minimum, consistent with the objectives of other Township ordinances and regulations.
- D. In no event shall the Township give approval to disturb vegetative ground cover in any Slope Conservation District in an amount greater than the percentages set forth in Subsection A hereof or when located outside the permissible disturbed area.

808. GRADING; EARTHMOVING

Where this chapter is applicable as stated in **Section 802**, the following shall apply:

- A. No person shall undertake grading, disturbing or earthmoving of land within a very steep slope district except as provided in this chapter. Grading or earthmoving within the steep slope district shall be permitted, provided that such grading or earthmoving does not create earthcuts or fills with a vertical dimension in excess of 10 feet, unless grading or earthmoving is a necessary element of any approved overall landscape plan for providing visual screening by earth berms or where it is required for the construction of retention ponds or similar environmental protection uses.
- B. Finished slopes of all earthmoving shall not exceed a slope of three horizontal to one vertical unless the applicant demonstrates that such slopes can be adequately stabilized and maintained as part of an application filed pursuant to **Section 811**.
- C. Prior to construction, suitable fencing must be in place at the limits of disturbance.

809. USE REGULATIONS

All uses within the Slope Conservation District shall be subject to the following:

- A. Uses shall be laid out so that the grading, vegetation removal and other site preparation shall be kept to an absolute minimum.
- B. Where grading is essential, shape and grade of the land affected shall complement the natural landform.
- C. Use of any parcel or tract of land shall be conducted in such a manner that no area in excess of 3,000 square feet shall have disturbed vegetative ground cover during the period from November 15 to April 1 except where protective measures including jute matting or other approved techniques are used as approved by the Township Engineer.
- D. All paving shall be completed within 10 working days after grading is completed, unless it is demonstrated to the satisfaction of the Township Engineer that such paving cannot practically be completed in such time, whereupon the Township Engineer shall authorize such additional period of time for completion of paving as has been demonstrated to be necessary and reasonable.
- E. Land around all structures erected shall be landscaped so as to blend them with the natural landscape.
- F. All reasonable measures to minimize erosion and sedimentation and to limit increase in stormwater runoff shall be taken.

810. SUBDIVISION LOTS

- A. No lot which is, in whole or in part, included within a Slope Conservation District shall be created by subdivision if no principal use permitted by the underlying zoning district can be made consistent with both the setback requirements of the underlying zoning district and the requirements of this chapter.
- B. All lots created by subdivision shall comply with one of the following:
 - 1. They shall have an area bounded by and enclosed within setback lines called the "building envelope," which shall be of sufficient size and dimension to permit the utilization of the area for a principal use or uses with the underlying zoning district without an encroachment upon the Slope Conservation District.
 - 2. If construction is to take place within a Slope Conservation District, the minimum lot area shall be three acres.

811. APPLICATION FOR APPROVAL

- A. All applications for approval for use of land which is included in whole or in part within the Slope Conservation District pursuant to this chapter shall include submission of the following materials and information:
 - 1. Location, dimension and elevation of the property.
 - 2. Existing and proposed uses and development including access drives.
 - 3. Existing and proposed contours at two-foot intervals. (See Section 805)
 - 4. Location and boundaries of steep slopes and very steep slopes as described hereinabove.
- B. The following additional information shall be submitted as deemed necessary by the Township Planning Commission, Township Board of Supervisors or the Township Engineer for the evaluation of the impact of the proposal:
 - 1. Typical cross sections and elevations of the property and proposed structures at intervals described on a horizontal scale of 50 feet per inch and a vertical scale of five feet per inch.
 - 2. A description of existing land cover characteristics of that portion of the property within the Slope Conservation District; such description shall indicate wooded areas, open non-wooded areas and the ground cover type in any areas with impervious surfaces. Proposed modifications to existing land cover shall also be indicated.

3. Soil types of the land to be used for those portions of the land included within the Slope Conservation District; soil types shall be further qualified relative to the subsurface horizons of the soil. The applicant may be required to consult the United States Soil Conservation Service for its comments and submittal to the Township.
4. Photographs showing existing uses, vegetation and topography of areas within the Slope Conservation District.
5. A report describing the slope, soil and vegetation characteristics of that portion of the property within the district. Such report shall also describe the proposed type and method of proposed building construction, the type of foundation systems to be employed, the proposals for landscaping, sewage disposal and water supply. Further, the report shall describe all sediment and soil control and stormwater management measures to be used as required by Newtown Township, the United States Soil Conservation District and the Pennsylvania Department of Environmental Protection and any and all additional engineering and conservation techniques designed to alleviate environmental impacts which may be created by proposed development activities.
6. Such information as may be sufficient to meet the information needs of the Township of uses and slopes within 200 feet adjoining the property involved, as well as sufficient information to evaluate the integration of usage(s) within the Slope Conservation District with the underlying zoning district.

812. AMENDMENTS TO PERMISSIBLE DISTURBED AREA

After approval, no change in ownership or use and no resubdivisions of land shall increase directly or indirectly the permissible disturbed area contained within a lot previously approved under provisions of this chapter. The locations of the permissible disturbed area, if not already disturbed, may be relocated as an amendment to the original subdivision, land development or conditional use approval.

813. APPROVAL OF CONDITIONAL USE

- A. In determining whether to grant a conditional use for a structure or use of land located in a Slope Conservation District, the Board of Supervisors shall take into consideration the factors set forth in **Sections 812 and 813** and the following:
 1. The relationship of the proposed use to the specific objective(s) set forth in **Section 800**.
 2. The standards set forth in other sections of this chapter.
 3. Whether abutting properties shall be adversely affected by possible runoff or erosion from the proposed use.

- B. No conditional use for a structure or use of land in a Slope Conservation District shall be granted unless it has been demonstrated by the applicant that:
1. The proposed use or structure is of proper engineering design and that the footings are designed to extend to stable soil and/or bedrock.
 2. Proposed on-lot sewage disposal facilities shall be designed and installed in conformance with all pertinent standards of the Township and of the Department of Environmental Protection.
 3. Proposed nonagricultural displacement of soil shall be undertaken only for purposes consistent with the goals and objectives of this chapter and shall be executed in a manner shall not cause excessive erosion or create other unstable conditions.
 4. Surface runoff of water shall not create unstable conditions, including erosion. Stormwater drainage facilities and/or systems shall be constructed where the proposed use shall or is likely to create conditions requiring such facilities.
 5. No other alternative location is feasible or practical for the proposed use.
 6. Earthmoving activities and vegetation removal shall be conducted only to the extent necessary to accommodate the proposed uses and structures and in the manner that shall limit as far as practical surface runoff, erosion or sedimentation or unstable soil conditions. Any and all reasonable mitigation techniques and procedures shall be utilized.

814. CERTIFICATE OF OCCUPANCY; USE PERMIT

- A. No land located within the Slope Conservation District and no building located on such land subject to this chapter hereafter shall be occupied, used or changed in occupancy or use unless and until a certificate of occupancy or use permit, as appropriate, has been applied for and obtained by the person proposing to so occupy, use or change the occupancy or use of such land or building.
- B. The applicant for such certificate or permit shall, as part of the application for such certificate or permit, submit to the Township a certification by a registered professional engineer or land surveyor, as appropriate, that the construction or physical modification of any structure and any grading or filling (or earthmoving or ground cover removal) of such land was performed in compliance with the plans approved according to the provisions of this chapter.
- C. The Township shall issue such certificates of occupancy or use permit, as appropriate, in conjunction with the Building Inspector, Township Zoning Officer, Township Engineer and/or other Township officials, when compliance with all Township ordinances has been accomplished.

815. DISCLAIMER OF LIABILITY

The granting of a zoning permit(s), certificate of occupancy or approval of a subdivision or land development plan for land located within proximity to a Slope Conservation District shall not constitute a representation, guaranty or warranty of any kind by the Township or by any official or employee thereof as to the practicability or safety of the proposed use and shall create no liability upon or estoppel of the Township, its officials or employees. The degree of erosion and sediment control protection intended to be provided by this chapter was determined to be reasonable for the regulatory purposes of this chapter and is based upon engineering and scientific methods of study. This chapter does not imply that areas not included within the Slope Conservation District boundaries or land uses permitted within such district shall be free from adverse effects of erosion.

816. CONSTRUUAL OF PROVISIONS.

No provision of the zoning, subdivision or any other ordinance shall be construed as defining any term of this chapter or modifying any provision hereof; nothing in this provision, however, shall be construed as limiting the independent effect of any other ordinance except to the extent provided herein.

817. ACTION UPON NONCOMPLIANCE.

In the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building, structure or land is used or occupied or any hedge, tree, shrub or other vegetative growth is maintained in violation of the terms of this chapter or any regulations made pursuant thereto, the appropriate Township authorities may, in addition to other remedies provided by law, institute appropriate action or proceedings in a court of equity in order to prevent such unlawful activity to restrain, correct or abate such a violation, to prevent the occupancy of such building, structure or land or to prevent any illegal act, conditions, business or uses in or about such premises.

818. VIOLATIONS AND PENALTIES.

- A. For any and every violation of the provisions of this chapter, the owner, general agent or contractor of a building or premises where such violation has been committed or exists and the lessee or tenants of the building or premises in a part of which such violation has been committed or exists and the general agent, architect, builder, contractor or any other person who knowingly commits, takes part or assists in any such violation or who maintains any building or premises in which any such violation exists shall be liable, on conviction, for a violation of this chapter. Whenever such a person has been officially notified by a Township official or by service of a summons in a prosecution or in any other manner that he is committing a violation of this chapter, each day that he continues such violation after such notification shall constitute a separate offense punishable by a like fine or penalty. Such fines or penalties shall be collected as like fines or penalties are now collected by law.

- B. Any person, firm or corporation violating any provision of this chapter shall, upon conviction, be punishable by a fine not exceeding \$1,000, plus costs of prosecution, and, in default of payment of such fine and costs, shall be imprisoned for a term not exceeding 30 days. Each day that a violation is continued shall constitute a separate offense.