

**Questions posed by John Tetzloff et al – March 2009**

These and other topics are under active discussion by an advisory board formed under the Darby Accord Planning effort.

*1. What is the open space definition for the agency, specifically, is there one in the 208 plan?*

No specific definition for the term “open space” is given in the State’s 2008 Plan.

A common sense interpretation in the application of the special 208 Plan prescriptions written for the ESDA area of Franklin County (Appendix 9-3) would be framed within the context of parcel(s) of land slated for development of some kind. It’s presumed that local zoning regulations are in effect and would impose various restrictions. Development of land currently zoned for agricultural or other kinds “undeveloped” property would be considered “open space” except for any structures, roads or other improvements already on the landscape.

**These Ohio EPA staff recommendations created in advance of presentation to Accord Advisory Panel**

- **Open space is pervious landscape areas that are set aside from the lots to be developed.**
  - **Our backyards don’t count!**
- **Features that protect water quality**
  - **Woodlots**
  - **Wetlands**
  - **Native grasses**
  - **Some cropland types**
- **Features that are weak on protecting water quality**
  - **Maintained recreational fields**
- **Local officials need to make land use decisions with an eye towards the cumulative impact on water quality conditions**

*2. Does the 208 require Conservation Developments in the ESDA area?*

**No.** The consensus recommendation from the EAG stated that local jurisdictions should make Conservation Development the “by-right” from of zoning. Convention subdivisions are permissible in the ESDA, but should be approved as a variance under the zoning process.

***The EAG recommends that conservation subdivisions should be a by-right form of development and conventional subdivisions be a conditional use that must go through a special approval process. (page 29 EAG report)***

However, this was one of three consensus recommendations from the EAG not carried forward in the State's 208 Plan.

***While each recommendation is well conceived and should be considered by local jurisdictions, the Agency did not find a sufficient connection to water quality to warrant their inclusion in the State's 208 Plan.***

So the matter of zoning subdivisions has been left to the local governments to handle as they see fit.

*2 (con't) Criteria 3 states "Local Preservation of Open Space through Conservation Subdivisions" but it doesn't seem to go into further detail concerning if developments have to be conservation style. It seems clear that primary conservation areas must be preserved in open space regardless of development type.*

**Yes.** Local jurisdictions are expected to implement the open space recommendations (including open space preservation). A specific method to accomplish this is not stipulated in the 208 Plan; however, possible options to accomplish the task are presented:

***A political jurisdiction shall adopt at least one of the following institutional mechanisms as a means to implement stream setback requirements and open space preservation requirements within the Big Darby Creek watershed in western Franklin County prior to the extension of centralized sanitary sewer service:***

- 1. watershed based zoning;***
- 2. subdivision zoning; storm water and/or flood plain regulations; flood plain regulations;***
- 3. council resolution; and/or***
- 4. ordinances.***

***(page 8, Appendix 9-3 208 Plan)***

Note that Ohio EPA is not forcing a local community to pursue these steps. But these steps are a pre-requisite condition that Ohio EPA expects to be in place prior to the extension of sanitary sewer service within the jurisdiction. If these steps are not taken then sewer extension will be denied unless the developer can demonstrate to the Agency's satisfaction that open space preservation requirements in the 208 Plan will be satisfied (criteria 3a through 3k).

3. *What can be done in an open space area via the permitted and prohibited uses list is pretty clear. However, there are definitely some gray areas. Here are a few we identified:*

*- is active recreational use prohibited in open space areas? For example, soccer fields.*

An “active recreational use” is not defined or mentioned in the 208 Plan. Rather the term passive recreational use is employed and stated to be a permitted use in open space preservation. Because Ohio EPA does not have clear authority to dictate land use and zoning regulations there is considerable latitude in defining the “passive” recreational pursuits. This statement appears in the 208 Plan:

***Uses that are passive in character shall be permitted in... , including, but not limited to, passive recreational uses, as permitted by federal, state and local laws, such as hiking, fishing, hunting, picnicking and similar uses.***

If there are no restriction imposed by federal or state law the local jurisdiction may decide that soccer fields are passive recreation, or they may decide that is such a use is not passive.

*Since motorized vehicles are prohibited in these areas - does this preclude mowing unless with a rotary mower?*

A prohibition on use applies to the activities of the public on the land, not the “caretaker’s” performance of maintenance and repair work.

*- Natural vegetation can't be disturbed, but is natural vegetation required? For example, if an area is considered open space and is a grassed area - is this considered natural vegetation and therefore it can't be mowed (ie disturbed) or is it not considered natural vegetation and so therefore can be disturbed?*

Let’s have common sense prevail. I don’t believe the 208 Plan requires any re-vegetation efforts to establish natural plants, it only says if they are present in an open space preservation area they should be left alone, or managed appropriately to ensure their survival. A grassed area in land currently zoned agricultural and within an open space preservation area is not a “natural” ecosystem, so should be appropriately managed (mowed if necessary) to establish the desired flora. A grassed picnic or athletic field in not a natural system either and it would obviously be managed (mowed) to allow the passive recreational use.

4. *Is there a definition for Conservation Subdivisions in the 208?*

No. The 208 plan itself does not provide a definition. The EAG was not able to agree upon a definition for the term. Thus, it is up to the local government to create whatever mechanism it chooses to carry out the required criteria in the 208 plan that preserve open space. The Ohio EPA will rely upon Appendix 9-3 of the 208 plan and the EAG report (pages 25 - 38) to interpret success in task.