

MODEL

Assignment of Grant of Conservation Easement and Declaration of Covenants with Commentary

Produced by

WeConservePA

with support from the

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Community Conservation Partnerships Program,
Environmental Stewardship Fund, under the administration of
the PA Department of Conservation and Natural Resources,
Bureau of Recreation and Conservation

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Preface

Purpose of the Model

An organization holding a conservation easement may find it necessary or desirable to transfer one or more of its easements to another organization because of some change in circumstance. The Model Assignment serves to facilitate the transfer of the easement and its associated responsibilities, as well as supporting documentation and stewardship funding, from one easement holder to another.

Before accepting an easement assignment, a prudent organization will exercise reasonable care and review of the natural and scenic resources of the property, compliance with the terms of the easement documentation, and the conformance of the existing easement documentation with applicable standards.

Customize

Many forms of easement grants exist and may become the subject of an assignment. Due to the variety of terms and provisions in these documents, each assignment based on the model must be tailored to reflect the language and concepts of the original document.

The model was drafted for use in Pennsylvania. It must be adapted to the laws, customs, and practices of the state in which it is to be used.

Help Improve the Model

WeConservePA welcomes suggestions for improving its guidance. Please email your comments to info@WeConservePA.org.

Other Resources

WeConservePA has published many guides addressing legal and policy considerations pertaining to conservation easements. Find them at WeConservePA.org.

Nothing contained in the model and commentary is intended to be relied upon as legal advice or to create an attorney-client relationship. The material presented is generally provided in the context of Pennsylvania law and, depending on the subject, may have more or less applicability elsewhere. There is no guarantee that it is up to date or error free.

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pennsylvania

DEPARTMENT OF CONSERVATION
AND NATURAL RESOURCES



Colcom Foundation

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Prepared by:

Name:

Address:

Telephone:

Return to:

Name:

Address:

Tax parcel(s):



**Model Assignment of
Grant of Conservation
Easement and
Declaration of Covenants**

**Assignment of
Grant of Conservation Easement
and Declaration of Covenants**

THIS ASSIGNMENT OF GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS dated as of _____ (the "Assignment Date") is by and between _____ (the "Assignor") and _____ (the "Assignee").

1. Background

1.01 The Conservation Easement

Assignor is the holder of a conservation easement established under the terms of the Grant of Conservation Easement and Declaration of Covenants (the "Grant") identified as follows:

Grant Date:

Recording Date:

Recording Office:

Recording Information:

1.02 Property Encumbered by the Easement

The conservation easement encumbers the real property (the "Property") identified as follows and more fully described in the attached exhibit captioned "Property Description" (which is incorporated into this assignment by this reference):

Street address:

Municipality:

County:

Parcel identifier:

State: Pennsylvania

Acreage:

1.03 Assigned Interests

The following items are referred to in this assignment, collectively, as the "Assigned Interests":

- (1) The Grant, the conservation easement established upon the Property by the Grant, and all other rights, powers, and interests of the holder as set forth in the Grant or any document executed in connection with the Grant.
- (2) The baseline documentation, the title policy, and any other policies insuring the interests of holder with respect to the conservation easement or the Property; and all

documents, agreements, instruments, reports, correspondence, waivers, amendments, notices, memoranda, messages, and other records, data, and information pertaining to the Property, the Grant, or other items described in this section.

- (3) All funds, cash or non-cash, held by or on behalf of or in trust for Holder pertaining to the Property or other items described in this section; all rights of Assignor to payment or reimbursement of any liability, loss, cost or expense arising from or pertaining to any of the items described in this section; and all accounts, promises to pay or contribute funds and other debt obligations now or in the future due or coming due with respect to the Property or other items described in this section.

2. Assignment

2.01 Covenants and Representations

- (a) **Assignee.** Assignee covenants and represents that it meets the criteria of a qualified organization under Section 170(h) of the Internal Revenue Code of 1986; is duly authorized to acquire and hold conservation easements under Pennsylvania's Conservation and Preservation Easements Act; is committed to upholding the conservation objectives described in the Grant; and has obtained all requisite approvals for acceptance of the rights and responsibilities of the holder as set forth in the Grant.
- (b) **Assignor.** Assignor covenants and represents that it has obtained all requisite approvals for the transfer of the conservation easement and its rights and responsibilities set forth in the Grant to the Assignee including such approval, if any, as is required to be obtained from a beneficiary named in the Grant or other holder of a third party right of enforcement with respect to the conservation easement. Assignor warrants and represents to Assignee that Assignor has no knowledge of any violation of any term, covenant, or restriction set forth in the Grant or other document or commitment included in the Assigned Interests has occurred as of the Assignment Date and remains uncured.

2.02 Assignment and Acceptance

By signing this document Assignor and Assignee agree that as of the Assignment Date:

- (a) **Assignor Conveyance.** Assignor assigns, transfers, and conveys to Assignee the conservation easement and all rights, powers, and interests of Assignor with respect to the Property, the Grant, and other Assigned Interests; and
- (b) **Assignee Acceptance.** Assignee assumes and agrees to perform all duties of Assignor as the holder of the conservation easement as set forth in the Grant or as party to other documents included in the Assigned Interests.

2.03 Release

As of the Assignment Date, Assignor is released from its duties as holder of the conservation easement as set forth in the Grant and as party to other documents included in the Assigned Interests.

3. Miscellaneous

3.01 Counterparts

This assignment may be signed in multiple counterparts, each of which constitutes an original and all of which, collectively, constitute only one document.

IN CONSIDERATION OF THE PAYMENT OF \$1.00 AND INTENDING TO BE LEGALLY BOUND, the Assignor and the Assignee have signed and delivered this assignment as of the Assignment Date.

Attest:

NAME OF ASSIGNOR

By: _____

Name:

Title:

NAME OF ASSIGNEE

By: _____

Name:

Title:

This document is based on the **Model Assignment of Grant of Conservation Easement and Declaration of Covenants** (v. 2021.12.01) provided by WeConservePA.



Nothing contained in the model, which was prepared in the context of Pennsylvania law, is intended to be relied upon as legal advice or to create an attorney-client relationship. There is no guarantee that it is up to date or error free. It should be revised under the guidance of legal counsel to reflect the specific situation.

COMMONWEALTH OF PENNSYLVANIA:

COMMONWEALTH OF PENNSYLVANIA :
SS

COUNTY OF :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public
Print Name:

COMMONWEALTH OF PENNSYLVANIA :
SS

COUNTY OF :

ON THIS DAY _____ before me, the undersigned officer, personally appeared _____, who acknowledged him/herself to be the _____ of _____, a Pennsylvania non-profit corporation, and that he/she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by her/himself as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____, Notary Public
Print Name:

Commentary

General Instructions

When in Doubt, Check the Commentary. The purpose of each provision is explained and, sometimes, alternative approaches are described and optional provisions provided.

Guides and Models. Unless otherwise noted, all guides and model legal documents referenced in the commentary are published by the WeConservePA. Thanks to WeConservePA's financial supporters, these are available free of charge at WeConservePA.org.

Structure Tracks Model. The model follows a simple outline structure, and the commentary follows the same pattern to make cross-referencing easy. A heading preceded by a number in the commentary refers to the same-numbered paragraph in the model.

Get Legal Counsel. The model and this commentary should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The model must be revised to reflect the specific circumstances of the particular project. Any document drafted with assistance of the model should be completed with the guidance of legal counsel to ensure that the document accomplishes what is intended without unintended consequences.

Disclaimer Box. Once a document based on a model has been prepared or reviewed on behalf of the Holder by an attorney licensed to practice law in the applicable state, you may delete the text at the end of the model that begins "Nothing contained in the model, which was prepared in the context of Pennsylvania law, is intended to be relied upon as legal advice or to create an attorney-client relationship..."

Tailor to the State. The model was drafted for use in Pennsylvania. It must be adapted to the laws, customs, and practices of the state in which it is to be used.

Updates. Check WeConservePA.org periodically for updates to the models.

Recording

Space for Recording Information. The top of the first page of the model provides space for information required by some county recording offices: the name and address of the preparer, the person to whom the document is to be returned, and the tax parcels of the real estate to which the document pertains. If the information is unneeded or undesirable in a particular county, delete the text but keep the lines to preserve a 3-inch margin at the top of the first page.

Margins. Minimum margin requirements vary among counties; however, a typical requirement is a 3-inch margin at the top of the first page of any document presented for recording and 1-inch margins on the left, right, and bottom margins. (However, page numbers may be less than an inch from page bottom.) Many counties require that documents presented for recording must be printed on 8.5-inch by 11-inch paper. The models are formatted to conform to these specifications.

Preparer Information. Pennsylvania law does not require that a lawyer or law firm be identified as the preparer of the document; however, non-lawyers preparing easement documents must take care to comply with applicable legal and ethical standards.

Staff. A non-lawyer employed as staff by the Holder or Owners (i.e., a party to the transaction) may prepare the easement document and be named as the preparer.

Non-staff. Non-lawyers who are not staff of one of the parties with an interest in the transaction may not provide legal documents for transactions. Producing such documents for others constitutes the unauthorized practice of law.

Ethical standards. See the note “Get Legal Counsel” above. Do not identify a lawyer as the “preparer” if the lawyer did not, in fact, prepare the particular document or review the changes made by someone else. Lawyers and other professionals, such as architects and engineers, are legally and professionally responsible for the work they produce for clients. Legal review is required for conformance with Land Trust Standards and Practices.

Title

Match Original Title. The model is called “Assignment of Grant of Conservation Easement and Declaration of Covenants,” but, to assure proper referencing in the public records, substitute the title of the original grant for “Grant of Conservation Easement and Declaration of Covenants.”

Opening Section

Parties. The “Assignor” is the organization that holds the conservation easement as of the Assignment Date. The “Assignee” is the organization accepting the transfer of the conservation easement.

Assignment Date. As a general rule, the Assignment Date is the date the parties sign the assignment, in recordable form, and the document is delivered for recording in the public records.

I. Background

I.01 The Conservation Easement

Purpose. This section identifies the conservation easement that is the subject of the transfer. When multiple easements are being transferred in a single transaction, record a separate assignment for each transferred easement to assure clarity in the public record.

I.02 Property Encumbered by the Easement

Purpose. This section confirms, for the parties and future title searchers, the Property that is encumbered by the conservation easement. An exhibit (captioned “Property Description”) must be attached to the assignment in addition to the identification information set forth in I.02.

I.03 Assigned Interests

Purpose. This section assures, by a broad definition of “Assigned Interests,” a comprehensive transfer of not only the easement interest in the Property but all of the supporting easement documentation and stewardship funding associated with the easement.

Additional Owner Funding. The Assignee may want to add a specific reference in subsection (3) to clarify that all transfer fees, stewardship contributions, and other additional funding required from Owners after the Assignment Date are included in the Assigned Interests.

OPTION: ADD A SECTION TO ADDRESS ASSIGNOR’S PROMISE OF ADDITIONAL FUNDING

Sometimes Assignee has been induced to accept responsibility for the Assigned Interests by Assignor’s promise to contribute additional funding after the Assignment Date. To incorporate

that promise into the Assignment, a new Section 1.04 may be added referencing the agreement between Assignor and Assignee which memorializes the promise to pay, for example:

1.04 Additional Assignor Funding.

To induce Assignee to accept the transfer of the Assigned Interests, Assignor has promised to contribute to Assignee the sum of _____ in accordance with the terms of the stewardship funding agreement dated _____.

This optional section may be adapted to substitute the name of someone else promising the additional funding, perhaps the Property owners or a beneficiary of the conservation easement. In this case, the substitute promisors must join in the assignment for purposes of confirming their promise under 1.04.

2. Assignment

2.01 Covenants and Representations

Purpose. This section provides assurances to, respectively, Assignee and Assignor that the transfer meets the requirements of applicable law (for example, qualifications on who can be a holder of a conservation easement) and documentation (such as by-laws and corporate resolutions) binding on the Assignee or Assignor, as the case may be.

(a) Assignee

State and Federal Rules. For the conservation easement to be covered by the protections of Pennsylvania's Conservation and Preservation Easements Act (and for the Assignor to exercise due care in its assignment), the Assignee must be either a governmental body or a charitable organization whose corporate powers include retaining or protecting natural, scenic, agricultural, or open-space values of real property as the term "holder" is defined in the Act. If the easement was originally donated as a charitable contribution for federal tax purposes, then the Assignee must also conform to the requirements of the federal tax code.

Assignor's Perspective. The Assignor wants all of the assurances listed here so as to avoid any possibility that the transfer could be called into question by either state officials (Office of the Attorney General acting on behalf of the Commonwealth) or the Internal Revenue Service. The Assignor wants assurance that "requisite approvals" have been obtained because Assignee, rather than Assignor, is better positioned to know what they are. For example, Assignee may be governed by a by-law requiring approval of a supermajority of directors for acceptance of a conservation easement; or a funding contract for acquisition of an earlier easement may contain a clause prohibiting Assignee from acquiring additional easements until certain financial benchmarks are met.

(b) Assignor

Approval or Notice. It is the responsibility of the Assignor to review the Grant and other documentation (for example, grant contracts) to see if anyone else has a right of approval over (or prior notice of) the transfer of holder's interest in the conservation easement. The commentary to the [Model Grant of Conservation Easement and Declaration of Covenants](#) recommends against providing owners a right of approval over the transfer of the easement to another holder; however, such provisions are sometimes present in older grants, or the grant may include a provision for giving of notice to the owners of an intended transfer.

Excluded Matters. Sometimes the Assignor and Assignee move to complete the assignment knowing (and accepting) that there is an uncured violation. When there is an uncured violation

as of the Assignment Date, it can be excepted from Assignor's representation by adding the phrase "except for the Excluded Matters described below in this article" to the end of subsection (b) and adding a new section 2.04 captioned "Excluded Matter" as provided in the option below.

2.02 Assignment and Acceptance

(a) Assignor Conveyance

This provision transfers to Assignee the Assignor's real property interests and any contract rights or other personal property interests Assignor holds in the items included in the Assigned Interests. Real property interests include the conservation easement and any affirmative easements held by Assignee in the Property (for example, a trail easement). Contract rights may include rights to additional contributions under a stewardship funding agreement, a right to receive proceeds under an insurance policy, or a right to enforce performance under a settlement agreement.

(b) Assignee Acceptance

Pennsylvania Law. Written and recorded acceptance by the Assignee of the rights and duties of holder is necessary to conform with section 3(c) of the Conservation and Preservation Easements Act.

Internal Revenue Code. This provision conforms to the Internal Revenue Code requirement for tax deductible easement donations that the holder must commit to upholding the conservation purposes of the easement.

Assignee Is Responsible. In addition to statutory requirements, this provision clarifies that, after the Assignment Date, the Assignee is the party liable for outstanding contract obligations with respect to the Property. For example, if the Assignor agreed to share the cost of construction of a publicly accessible fishing pier on the Property, and payment was not yet due as of the Assignment Date, the Assignee becomes responsible for the Assignor's obligations with respect to the pier.

2.03 Release

Purpose. When a conservation easement is transferred, the expectation of the Assignor is that it will have no further responsibility for administration or enforcement of the easement. This provision assures that this understanding is clear to the Assignee, the owners, anyone claiming rights as a beneficiary of the easement, and, more broadly, anyone searching the public record to see who has responsibility for the easement.

OPTION: ADD A SECTION TO ADDRESS UNCURED VIOLATIONS AND UNRESOLVED DISPUTES

As discussed in 2.01(b) above, the Assignor and Assignee may agree to move forward with a transfer notwithstanding the existence of an uncured easement violation. It is preferable to have a clean slate as of the Assignment Date but, when that is not feasible, the next best option is to carefully document the outstanding violation and the understanding of the parties as to the responsibility for resolving the matter. Address the unresolved matters by adding this new section:

2.04 Excluded Matters

Assignor and Assignee have agreed to resolve the Excluded Matters as set forth in a memorandum signed by Assignor and Assignee and dated as of the Assignment Date. Such memorandum, whether or not attached to the Grant, is incorporated into the Grant by this reference. Assignee does not assume liability for Excluded Matters except as set forth in the

memorandum. Assignor is not released from liability for Excluded Matters except as set forth in the memorandum.

Excluded Matters may include uncured violations of the conservation easement or other terms of the Grant or other document included the term Assigned Interests as well as disputes with the Property owners or others pertaining to the Property which arose prior to the Assignment Date and remains unresolved as of the Assignment Date.

3. Miscellaneous

3.01 Counterparts

Purpose. This provision allows the convenience of signing and exchanging documents outside a formal closing.

OPTION: ADD A SECTION TO ADDRESS APPROVAL BY A THIRD PARTY

If a person other than Holder and Owners has a right to approve the assignment, this may be addressed in a new section, for example:

3.02 Third-Party Approval

_____ County, a third-party beneficiary of the conservation easement, has approved this assignment by [name of document] dated [insert date].

Closing Matters

Closing Recital. When a person making a promise gets nothing of value in return – receives no *consideration* – the law may not require the promise to be kept. The phrase *intending to be legally bound* is a valid substitute for consideration in the Commonwealth of Pennsylvania (but not necessarily other states).

Witness/Attest. It is good practice but not necessary for validity or recording to have a document witnessed or, if a corporation, attested by the secretary or assistant secretary.