

MODEL

Trail License Agreement

with Commentary



Model updated 10/3/2022
Commentary updated 10/3/2022

Preface

Purpose

A property owner may be sympathetic to a trail organization wanting to maintain a trail running through the owner's land. However, the owner may rightfully have qualms about making any long-term commitment to public use. The *Model Trail License Agreement* is a tool that gives owners the flexibility to allow a trail while explicitly ensuring that no long-term obligation is being established and providing for easy termination of the permission if the trail use is not working out to the owner's satisfaction. The model also serves to clearly set forth the understandings of the owner and the trail organization regarding the permission being given and concerns the owner may have relating to public use.

The model uses plain language to improve readability. The model's commentary explains the reasoning behind every provision, instructs on applying the model to particular circumstances, and provides optional provisions to address a variety of variables.

Trail Easement Is Generally Preferred to a License

WeConservePA publishes two model documents for establishing permanent trail easements: the [Model Grant of Trail Easement](#)—a simple, one-page document to be used when brevity is a paramount concern—and the [Model Trail Easement Agreement](#)—an easement document that sets forth the owner and trail organization arrangement in great detail.

Wherever an existing or potential future trail is expected to someday have a great number of users, WeConservePA strongly urges the use of trail easements rather than licenses to ensure that the public's access is not lost. Much better for the trail organization to go to the trouble to establish permanent access in the near term than be faced with the permanent loss of the trail years later when it will likely be much harder to reroute or recreate the trail experience elsewhere.

With that said, WeConservePA recognizes that there are circumstances where an owner simply will not consider a permanent trail easement. In those cases, WeConservePA encourages the trail organization to build a track record of success and marshal the resources that might enable it to one day—preferably sooner rather than later—convince the owner to convert the license into a permanent easement.

Improve the Guidance

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 trails. Find them in the library at WeConservePA.org.

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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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Model Trail License Agreement

WeConservePA publishes this model at WeConservePA.org. Refer to the commentary for explanation of each of the model's provisions. WeConservePA also publishes the Model Trail Easement Agreement and Model Grant of Trail Easement. Explore all the alternatives to ensure that you are using the best tool for your circumstances.

TRAIL LICENSE AGREEMENT

THIS TRAIL LICENSE AGREEMENT dated _____ is between _____ (the "Owners"), with a mailing address of _____ and _____ (the "Organization"), with an address of _____.

BACKGROUND

The Organization wishes to maintain a footpath (the "trail") on the Owners' land at _____ (the "Property").

With this agreement, the Owners are providing a revocable license to the Organization for the trail. Either party may terminate it as provided below.

The Owners and Organization recognize that the Recreational Use of Land and Water Act limits their liability for personal injury and property loss if no disqualifying fee is charged for use of the trail.

AGREEMENT

- Access.** The Owners grant to the Organization certain rights to enter the Property and make the trail available for public use on the terms and conditions set forth in this agreement.
- Trail Specifications.** The location of the trail is:
 - _____ in its presently existing location with some minor adjustments in places over time to stabilize the trail, maintain a passable path, and prevent erosion as needed.
 - _____ to be determined by mutual agreement of the Owners and the Organization.
 - _____ shown on the attached sketch, which is incorporated into this agreement by this reference.
 - _____ to be determined by the Organization subject to the limitations (if any) described as follows: _____
- Trail Use.** The Organization may make the trail available to the public for foot travel, nature appreciation, and the activities checked below:
 - snowshoeing cross-country skiing bicycling horseback riding
 - hunting fishing [other] _____
- Trail Development and Maintenance.** The Organization, and persons engaged by the Organization, may:
 - paint blazes and install markers so that the trail route can be followed easily.
 - install signs related to the trail such as private property courtesy signs and signs prohibiting undesired activities.
 - maintain, replace, and upgrade already existing trail structures.
 - install structures within and along the trail to stabilize or prevent erosion of the trail, or to facilitate passage of the trail through wet areas.
 - only after consultation and agreement by Owners, install bridges, boardwalks, or other structures not described above.

5. **Liability.** Use of the trail is for recreational purposes only. Persons using the trail do so at their own risk. Neither the Owners nor the Organization may charge for access, nor do they assume any duty to inspect or maintain the trail or warn of any defects or dangerous conditions.
6. **Trail Closure.** The Organization has the right to close the trail at any time and for any length of time. The Owners reserve the right to close the trail and post notice of closure at trail entry points when, in their judgement, closure is advisable to avoid risk of injury to trail users. When trail closures are scheduled in advance, the Owners may, by five days' advance notice, require the Organization to post notice of trail closure at trail entry points.
7. **Entire Agreement.** This agreement, including any sketch or other exhibit referred to and attached to this agreement, is the entire agreement of the Owners and the Organization pertaining to the trail and supersedes any other agreements or understandings whether or not in writing.
8. **Termination.** Either party may terminate this agreement and license after 60 days' notice to the other party.
9. **Transfer of Property.** In the event the Property is transferred to another party, this agreement does not extend to the new party. However, to support the continued existence of the trail, the Owners agree to inform anyone to whom the Owners anticipate transferring the Property of the trail and this agreement; if the Property is transferred, the Owners agree to inform the Organization of the names and contact information for the new owners.
10. **Consideration.** The Owners and the Organization mutually acknowledge the receipt of \$1.00 and other good and valuable consideration for the execution and delivery of this agreement.

INTENDING TO BE LEGALLY BOUND, the Owners and the Organization have signed this agreement as of the date set forth above.

Owner's name:

Owner's name:

[Organization]

By: _____
Name and title of authorized representative:

This document is based on the Model Trail License Agreement (v. 2022.10.03) 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.

Commentary to the Model Trail License Agreement

General Instructions

Model Label. Delete the label “Model Trail License Agreement,” and the note below it before finalizing a trail license agreement using the model.

When in Doubt, Check the Commentary. The purpose of each provision is explained and, often, variations are provided to address alternatives that may be useful in particular situations.

Guides and Models. Unless otherwise noted, all guides and model legal documents referenced in the commentary are published by WeConservePA and, thanks to WeConservePA’s donors, made available free-of-charge at the WeConservePA.org library.

Structure Tracks Model. The main body of the commentary follows the same section numbering as the model.

Start from a Model. Each organization should feel free to create its own version of the model by incorporating additional or alternative provisions (from the commentary or otherwise) that reflect the policies and preferences of that organization. That version or the then-current version of the model available at the WeConservePA.org library should be used as the starting point for each project. Avoid using a document prepared for another project as a starting point

for a new license. A model serves in part to remind users of the issues that need to be considered in the drafting process. The value of a model is lost, and errors and omissions become virtually guaranteed, when a document prepared for another property is used as a starting point for a new easement.

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

Disclaimer. Once a document based on the model has been prepared or reviewed by an attorney licensed to practice law in the applicable state, you may delete the disclaimer at the bottom of the model that reads “Nothing contained in the model ...”

Other States. Users outside of Pennsylvania need to take care to modify the model to account for differences in state laws.

Updates. Check the WeConservePA.org library periodically for updates to the model.

Opening Recital and Background

Opening Recital

Purpose. The opening recital identifies the parties to the document, their addresses for notice purposes, and the date of the document.

Owners. Insert the names of the Owners permitting entry onto the Property. Insert the address of the premises where Owners would receive any notice sent by Organization under the agreement. This address is not necessarily the address of the property that the trail is located upon.

Organization. Insert the name of Organization and the address of Organization for notice purposes.

Date. The date can be added in handwriting at the time of signing.

Background

Purpose. The background informs the reader of the intentions of the parties in entering into this agreement:

First, the subject matter of the agreement (the trail) is identified. Describe the location of the Property with a street address and, if available, a parcel identifier for clarity.

Second, the intentions of the parties to create an arrangement freely revocable by either party are spelled out.

Third, the parties confirm their understanding that Pennsylvania law limits the liability of landowners and trail managers for personal injury and loss of property related to public recreational use when no disqualifying charge is made for the public access.

You may add additional information to the background if that is desirable to the Owners or Organization.

1. Access

Purpose. The section operates to grant a right of entry to the Organization itself to enter the Property and for the Organization to make the trail available to the public for the purposes permitted by Owners under the agreement.

Public Use. The right of entry is not granted directly to the public. The Organization may limit, in its discretion, the time, place, and manner of public entry or prohibit it altogether if it chooses.

Explicit Assurance to Owners. If the Owners want explicit assurance of their continuing rights to use the area in and around the trail (rather than relying on the unstated fact that Pennsylvania law already provides this assurance), you may add an additional sentence such as the following to this section:

The Owners may continue to use the area in which the trail is located for activities that do not interfere with the rights of access granted to the Organization; for example, gathering firewood and mowing.

Motorized Access for Owners. If the Owners have an interest in being able to occasionally use motorized vehicles on the trail, you may want to clarify the scope of this use to avoid misunderstandings in the future. For example, add sentences to this section such as the following:

Owners reserve the right to incidental, occasional passage on and along the trail by motorized vehicle for the gathering of firewood, hunting, routine farming practices, and other similar personal or land management activities.

Or:

Owners reserve the right to ride mountain bikes and motorized vehicles on and along the trail. They additionally reserve the right to invite friends and neighbors to likewise use the trail.

2. Trail Specifications

Purpose. This section evidences the understanding of the parties as to the location of the trail. If desired, other trail specifications may be detailed in this section as well.

Trail Location

Methods to Fix Location. The section sets forth four possibilities for identifying the trail location. You may check the appropriate possibility, delete the irrelevant possibilities, or customize a description of the trail location as best fits your situation and preference.

Formalizing an Existing Trail Use. Sometimes the license will serve to formalize an informal trail use that has developed in the past. The first alternative presented by the model uses the location of the trail developed by past use as a guide to establish the location of the trail established by the agreement.

Getting Agreement at the Conceptual Stage. Sometimes the path of the trail has not been set; it is however understood that the Organization wants to locate the trail somewhere on the Property and that the Organization wants an understanding that the Owners will permit the trail before both the Organization and Owners spend additional time working out a mutually satisfactory location for the trail. The model's second alternative addresses this situation.

Sketch. The model's third alternative relies on the parties agreeing to a trail location as depicted on a sketch. This sketch can be as specific or generalized as acceptable to the parties.

Set by Organization Within Limits. The model's fourth alternative provides the Organization the flexibility to set the location subject to the limitations agreed to by the parties. Examples of limitations include:

The trail must enter and exit the Property at the entry point and exit points indicated on the attached sketch, which is incorporated into this agreement by this reference.

Or

The trail must be located within ____ feet of the northern boundary of the Property.

Or

The trail must be located on the eastern side of the stream bisecting the property and within ____ feet of the stream.

Other Trail Specifications

If the Owners are concerned about controlling the width of the trail tread within the area designated for the trail, you may add a sentence to this section such as the following

The width of the trail tread is not to exceed three feet. This limitation does not preclude the Organization from using additional width as is reasonably necessary for trail establishment and maintenance activities.

If substantial earth disturbance is anticipated for trail establishment or maintenance activities and Owners

are concerned with whether the Organization will appropriately restore impacted areas, you may add a sentence to this section such as the following:

Following trail construction and maintenance activities, the Organization is obligated to restore the area of disturbance to either side of the trail tread as nearly as possible to its condition prior to the disturbance or, if that is not feasible, to a condition mutually agreeable to the Owners and Organization.

3. Trail Use

Purpose. This section establishes the scope of permitted public use of the trail.

Footpath. The model provides a basic permission for the Organization to provide a trail across the Property for traversing the Property on foot.

Other Means of Travel and Activities. The model provides a menu of other means of moving on the trail

and other activities an Owner might be willing to permit in conjunction with traversing the Property. You may check the appropriate possibilities, delete the irrelevant possibilities, or add activities as best fits circumstances. The possibilities presented are intended to get the parties thinking about the scope of activities they might want to contemplate; they do not cover the universe of reasonable possibilities, nor do they necessarily address all the most likely activities.

4. Trail Development and Maintenance

Purpose. This section establishes the scope of permitted trail development and maintenance activities by the Organization.

Assurance of Good Care. Some Owners may want the comfort of having a provision that obligates the Organization to keep the trail in good order. If mutually acceptable, you may add a provision such as the following, to the end of the section:

The organization will monitor the trail for litter and debris and clean up problems

when identified to keep the trail in good order.

Trash Receptacles. For locations where the use of trash receptacles might be a practical strategy for managing litter, you may add an additional provision such as the following:

The Organization may install and service trash receptacles if that is determined to be a constructive strategy for reducing litter.

5. Liability

Purpose. This section affirms that neither the Owners nor the Organization intend for the license to suggest that either party is taking on an obligation to inspect or maintain the trail or warn of any defects or dangerous conditions. It also reinforces the mutual understanding set forth in the Background section.

No Charge Permitted. The provision requires that neither the Owners nor the Organization will charge for use of the trail. Charging for recreational access generally negates the immunity from personal injury and property loss liability provided by Pennsylvania's Recreational Use of Land and Water Act. Note that certain charges are permissible and could be listed as

exceptions here. For more information, see the WeConservePA publication "[Guide to Pennsylvania's Recreational Use of Land and Water Act: A Law Limiting the Liability of Those Who Open Their Land to the Public.](#)"

Additional Assurance for Owners. The Owners may not be satisfied with relying on the Recreational Use of Land and Water Act protections, which, although powerful, are not absolutely foolproof. They may want assurance that if a trail user claims injury as a result of an unsafe condition, the Organization will take responsibility to defend against the claim. If the

Organization is agreeable, you may add a provision, such as the following, to this section.

If a person using the trail asserts a claim for bodily injury or property damage caused by an unsafe condition on the trail, and the unsafe condition was not the fault of the Owners or anyone on the Property at the invitation of the Owners, then Organization agrees to defend such claim on behalf of both the Owners and Organization. If such defense is not successful, Organization agrees to hold the Owners harmless from any judgment entered against the Owners on account of such claim.

This provision is intended to give the Owners comfort that, should the defense of immunity under the Recreational Use of Land and Water Act not be sufficient to

quash a civil action for an alleged injury to a trail user, then the Organization, either directly or through its insurer, will engage legal counsel to defend the civil action for both itself and the Owners. The Owners need not furnish their own defense. Should the Owners or Organization be found legally responsible for the unsafe condition, then it is the obligation of the Organization to pay the claim.

Owners' Limited Responsibility. The Owners are responsible only for injury or damage caused by unsafe conditions that the Owners create. Claims for injuries caused by unsafe condition—icing, slippery leaves, steep rocky slopes—that occur naturally are, by agreement of the Owners and the Organization, the responsibility of the Organization to the extent immunity is not available.

6. Trail Closure

Organization May Close Trail. The first sentence of this section serves to emphasize that the Organization may close the trail for any reason (including conditions posing a risk of injury to the public).

Owners May Close Trail to Avoid Risk. When conditions posing a risk of public injury come to the attention of the Owners, the second sentence of this section makes clear that they have the right to close

the trail at their own initiative. Protections from liability afforded by the Recreational Use of Land and Water Act are a comfort, but it is always best to avoid significant risk of injury in the first place.

Notice of Closure. When the Owners plan to close the trail to address a future safety concern (e.g., timber cutting in the vicinity of the trail), they may require the Organization to post notice of the pending closure.

7. Entire Agreement

Purpose. This section rules out the possibility that either the Organization or Owners may assert that there is an agreement or understanding between the parties about the trail that predates and exists in addi-

tion to the content of the license agreement. The parties may develop new understandings and agreements after the license agreement is signed, but the license agreement replaces any agreement or understanding that might have existed prior to the license agreement.

8. Termination

Purpose. This section provides for an orderly withdrawal from the agreement should either the Owners or Organization elect to do so. You may adjust the

number of days' notice required to be more or less than the suggested 60 days depending on the preferences of the Owners and Organization.

9. Transfer of Property

Purpose. This section serves to encourage early communication with new and pending owners of the Property to improve the chances that they will agree

to continued use of the trail during their ownership of the Property.

10. Consideration

Purpose. This section sets forth the amount of consideration (if any) being paid for the easement. The model denotes nominal consideration by listing \$1.00 as the consideration. If the actual amount of consideration is more than \$1.00, change the amount accordingly.

Nominal. It is not strictly necessary *in Pennsylvania* to reference nominal consideration. As long as the phrase “intending to be legally bound” (see “Closing Matters” below) is retained in the document, this section may be deleted.

Closing Matters

Consideration in Pennsylvania. The phrase “INTENDING TO BE LEGALLY BOUND” is a valid substitute for consideration in the Commonwealth of Pennsylvania as provided by the Uniform Written Obligations Act, 33 Pa. Stat. §6. (The term “consideration” means something of value given in return for a promise.) Use of the phrase is important in circumstances where the license is being donated with no consideration being given. Note that *only in Pennsylvania* is the phrase “intending to be legally bound” recognized by statute as a valid substitute for consideration.

Signature Lines. Add as many signature lines as are necessary to accommodate the number of persons who will be signing the document.

The signature lines assume that the Owners are individual people. If an Owner is a corporation, partnership, or other entity, signature lines similar to those provided for the Organization should be substituted.