

Using the Model Conservation Easement

The Model Grant of Conservation Easement and Declaration of Covenants provides users with a state-of-the-art legal document. Built on a foundation of research that identified working (and failing) easement practices around the country and fine-tuned in response to user experiences and feedback over many years, no easement document has received more peer review. The expansive commentary explains the reasoning behind every provision, instructs on use of the model, and provides a wealth of alternative and optional provisions.



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Introduction

An Easement Is Only as Strong as the Document Underpinning It

A conservation easement can only be as strong as the legal document—the grant of easement and declaration of covenants—that underpins it. Innumerable lessons have been learned in easement projects across the country over the decades. To maximize the conservation benefits delivered by a conservation easement and its durability over time requires easement drafters to prepare grants of conservation

easement that are informed by these lessons. The [*Model Grant of Conservation Easement and Declaration of Covenants with Commentary*](#) embodies decades of user experiences and hard-gained knowledge in the use of conservation easements.

Use a State-of-the-Art Document and Save

The [model](#) is designed for use by private land trusts, local and state governments, landowners, and their respective legal counsels. Thanks to the collective input of countless conservation practitioners, the model and commentary take full advantage of the lessons of the past and the best knowledge of the present. The extensive guidance that accompanies the state-of-the-art legal document provides users with what they need to customize the model to nearly any situation. Users can avoid the legal costs of re-inventing easement documents and provisions and can instead focus legal counsel on addressing issues truly unique to the particular project.

Note that the model does not eliminate the desirability of legal counsel. A good attorney will ensure that, given particular circumstances and customizations, the easement document does what is intended.

Take Advantage of Collective Experiences

The model, released in its official first edition in 2005, is informed by many years of regular and heavy use by land trusts, governments, and landowners across Pennsylvania and the nation. No conservation easement document has benefited from more real-world testing, user scrutiny, and

cycles of peer review and improvement. The [seventh edition](#) alone underwent six rounds of public review and critique before being finalized.

Other Models

WeConservePA publishes a variety of easement and conservation-related [model legal documents](#) and posts them at the [WeConservePA Library](#).

Benefits of Using the Model

Users benefit from the [Model Grant of Conservation Easement and Declaration of Covenants with Commentary](#) in multiple ways:

- They avoid the legal costs of unnecessarily re-inventing easement documents and provisions. They can focus legal expenditures on addressing specific issues unique to a particular project.
- The many lessons of the past are built into the content of the model and its commentary. WeConservePA judiciously updates the commentary and, less frequently, the model, when it is necessary or desirable to address new user experiences and advances in the field of conservation. This enables individuals to stay on the cutting edge of easement preparation with minimal effort.
- With a wide range of organizations using the same document, there are many people at many different organizations working within the same document framework. This facilitates people helping one another in addressing easement issues.
- The model brings assurance to both the potential easement holder and grantor that each is being treated fairly. Both parties and their respective legal counsels have the same access to the same model language, alternative provisions, and explanatory material when discussing and negotiating the easement transaction.
- Legal counsel, particularly those without extensive easement experience, are comforted by (1) having

full access to the same widely accepted materials as the other party and (2) knowing that the model has been vetted by numerous attorneys through the years and huge numbers of model-based documents have been recorded. (They are also less likely to try to “improve” a proven document—thus enabling the client to avoid billings for rewrites of questionable or marginal value.)

- The model brings credibility. Funders are comforted knowing the project they are funding is built on a rock-solid legal document that has stood the test of repeated use over time.
- Purchase options, sales agreements, and rights of first offer and negotiation can be written to specify that the document will be in the form of the model. This, plus a few details regarding the conservation objectives and physical boundaries, can easily bring desired specificity to these documents.

Management of the Model

WeConservePA is deeply committed to supporting the [model](#). It does so by:

- **Keeping it fresh.** WeConservePA is continually looking for ways to improve its guidance and makes additions and improvements to the commentary and changes to the model when determined to be needed or desirable.
- **Engaging users.** WeConservePA engages users in considering major and minor changes to the model. For example, the seventh edition was preceded by months of discussions and six drafts published for public review and critique.
- **Providing transparency.** WeConservePA posts listings and explanations of changes made to the model with each new version for all to see at the [WeConservePA Library](#).
- **Being judicious in making changes.** Since the model is a mature, well-developed tool that many organizations have customized, WeConservePA

endeavors to be conservative in considering modifications. In practice, this means that changes to the model are made infrequently (and are modest).

The commentary is updated more often—whenever WeConservePA sees an opportunity to help users better use the model.

WeConservePA approaches its maintenance of the model with rigor, always attending to key principles underpinning the model when considering changes, including:

- **Being consistent.** WeConservePA adheres to strict, established rules regarding the structure and content of the model when making modifications. For example: plain language is used wherever possible; words and terms are defined wherever meanings could reasonably be misconstrued against the interests of conservation; and cross-references to specific sections are avoided to prevent drafting errors.
- **Avoiding undue burden.** The model's covenants and administrative rules are designed to uphold conservation in the long run without unduly burdening either landowners or holders. For example, unlike many easements, the model avoids prohibiting an activity simply because the activity is commercial; rather, restrictions are based on the potential for activities to harm the land's conservation values.

WeConservePA provides training regarding the model at national and regional conservation conferences, at the Pennsylvania Land Conservation Conference, and via online or in-person workshops and seminars.

Using the Model

Quick Start Guide

If you are new to the model, take a few minutes to review the [Quick Start Guide](#).

Use the Commentary

The model's expansive commentary explains the reasoning behind every provision, offers instructions on applying the model to particular circumstances, and provides alternative and optional provisions to address a variety of variables.

Tailor to the Situation

The commentary helps users understand the sections of the document where tailoring is appropriate or desirable, as well as provisions that are generally best left untouched.

An example of appropriate customization: The model provides for three levels of protection to deal with variations in conservation objectives across a property; one or two levels can easily be removed, and the commentary provides instructions on doing so.

Involve Legal Counsel

Although the model helps users avoid many legal expenses, it is generally wise to involve legal counsel before completing a project. A good attorney will ensure that, given particular circumstances and customizations to the model, the resulting easement document will accomplish what is intended.

The model is tailored to Pennsylvania state law, and the Pennsylvania Department of Conservation and Natural Resources requires its use for Department-funded grant projects. The model has been applied to numerous local government and federally-funded projects and has been adapted for use across much of America.

Since each state's laws and customs are different, users outside of Pennsylvania need to take particular care to modify the model to account for these differences.

Find the Latest Version Online

Thanks to WeConservePA's supporters, the [latest version](#) of the model, as well as the commentary and a quick start

guide, is always available free-of-charge at the [WeConservePA Library](#).

Amending and Restating a Grant of Easement

The model is often adapted for the purpose of amending and restating a grant of conservation easement. The topic of amending and restating grants of easement is addressed in the commentary's supplemental provisions as well as in the guide [Drafting an Amendment and Restatement of a Grant of Conservation Easement](#).

Help Improve the Model

WeConservePA is deeply committed to optimizing the effectiveness of the model and commentary. Suggestions for improvements are always welcome. Please direct comments to WeConservePA via [phone or email](#).

Notes on Editions

The [model](#) was originally published in 2005. The seventh edition was published in December 2016. The latest version of the seventh edition was released in the fall of 2023.

Moving from the sixth to seventh edition involved extensive and intensive public feedback—in-person discussions, webinars, and postings of drafts (six in all) for public comment. The process ran from spring 2015 through fall 2016. The differences between the sixth and seventh editions and brief explanations of the changes can be viewed at the [model's page](#) in the [WeConservePA Library](#).

The model's publication history is as follows:

- 1st edition – Jul. 2005
- 2nd edition – Apr. 2006
- 3rd edition – Sep. 2007
- 4th edition – Apr. 2008
- 5th edition – Sep. 2008
- 6th edition – Oct. 2011
- 7th edition – Dec. 2016

Since the publication of the seventh edition, minor improvements were made in 2017, 2019, 2020, 2021, and 2023. The changes are itemized by WeConservePA and posted at the [WeConservePA Library](#).



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Nothing contained in this document 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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