

# Adding to Land Under Conservation Easement



A landowner has land under conservation easement and is ready to conserve more of their nearby property. How best to carry this out? This guide describes three approaches and includes a model document to help implement one of the alternatives.

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## Introduction

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A landowner has land under conservation easement and is now interested in placing more of their adjacent or nearby land under easement. Once the landowner and easement holder have reached agreement on the objectives to be achieved in conserving the additional land, how should they proceed?

Three approaches are available to achieve the desired result of conserving the additional land:

1. Record an amendment to the existing easement document (referred to in this guide as the *original grant*) that will expand the description of the eased property to include the additional land.
2. Record a new grant of conservation easement (referred to in this guide as the *new grant*) that will protect the additional land separate from the existing eased property.
3. Take a *hybrid approach* and record a very simple new grant on the additional land followed immediately by recording an *amended and restated grant* of conservation easement consolidating both easements into one easement governed by the terms set forth in a single document.

This guide looks at the three approaches and examines the factors to be considered when choosing the approach best suited to a specific situation: assuring easement enforceability; furthering the conservation objectives for all of the eased property with clear and effective controls; facilitating easement administration; and achieving other goals of landowners and holder.

## Amendment Approach

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The amendment approach is best suited when the natural and scenic resources of the additional land are substantially the same as the existing eased property; the conservation objectives are the same; and, as a result, the controls on the future use and development of the eased property provided in the original easement document may be applied to the additional land with little or no tailoring.

*Example:* Landowners reserved from the original easement a portion of the pasture in case they needed to sell a potential house site. They now find that is no longer necessary and want to give up their rights to subdivide and sell the formerly excluded area.

This example is a good candidate for the amendment approach for the following reasons:

- The additional land is pasture used identically to the existing eased land.
- The conservation objectives for the additional land are identical to the existing eased land and, thus, existing controls on use of the pasture may be applied to the additional land with little or no need for change to the existing text.
- The additional land is, and will for the most part remain, unimproved. The amendment will not be

complicated with provisions addressing how the existing document applies to improvements (existing and future) within the additional land and how impervious coverage is increased or allocated differently among improvements.

- The additional land is being eased to keep the entire farm as a unit; thus, one easement must apply to the whole. The amendment will include a prohibition on transfer to achieve this objective.

## Age of Grant Form and Tax Considerations

An amendment and restatement in full, rather than the minimal amendment described above, may be advisable if factors, such as the following, are in play:

- The original grant is based upon an old grant of easement form. Modern easement forms are typically far superior in optimizing conservation results and minimizing easement management and enforcement problems than documents of years past. It generally makes sense to conserve land with modern forms (and update older forms) whenever reasonably possible.
- The landowners desire to claim a charitable deduction for the donation of the conservation easement as to the additional land. They risk disallowance of their claim if their gift is not documented on a form compliant with the most recent guidance and decisions pertaining to conservation easement donations.

If the decision is to amend and restate, then consider using the hybrid approach.

## Assuring Enforceability

The amendment approach requires special care in documentation to avoid problems that may affect easement enforceability. *The issues discussed below are avoided when a new grant or the hybrid approach is used to ease the additional land.*

### Always Include a Granting Provision

Simply substituting a new or supplemental legal description for the one incorporated into the original grant is not adequate. An amendment document does *not* grant a conservation easement over the additional land unless the

document specifically includes a provision conveying a conservation easement from the landowners to the easement holder. For example:

*The Owners grant and convey to the Holder an unconditional and perpetual conservation easement over the land described under the caption “Additional Land” in exhibit A attached to and incorporated into this Amendment.*

### Adequate Public Notice

From the time the original grant was recorded, anyone searching the public record was put on notice of the conservation easement over the original eased property. If the original grant is amended to add land, will a person searching title to the additional land recognize that it too is encumbered by the original easement? The risk of error (and potential for disputes about adequate notice) can be entirely avoided by recording a new grant on the additional land.

If amendment only (and no new grant) is the approach selected, the following suggestions may help ensure that the easement on the additional land is not inadvertently missed during a search of title:

#### Title

Call attention to the grant of easement on additional land in the title, for example:

*Amendment of Grant of Conservation Easement (including Grant of Conservation Easement on Additional Land)*

#### Tax Parcel ID

If the additional land is a separate tax parcel, call attention to it by inserting, after its tax parcel number, a parenthetical such as:

*(additional parcel added by this Amendment to existing conservation easement area)*

#### Notice Caption

Consider adding to the amendment document a caption in bold lettering; for example,

***Notice: This Amendment grants a conservation easement over the land described as “the Additional Land” in this Amendment in addition to the eased***

*property described in the Original Grant identified below.*

## Separate Easement Approach

Recording a new grant to be administered separate from the original grant is a good choice when the additional land is a separate parcel that will likely be transferred into separate ownership. Absent a good reason to keep multiple parcels under a single easement, separate administration avoids the headaches that sometimes arise when neighboring landowners are parties to the same easement.

*Example:* Landowners own a working farm protected by conservation easement. They plan to acquire a forested parcel in the vicinity of their existing eased property; protect it by donation of a conservation easement; then resell the parcel. The conservation objectives for the new parcel will be to protect the water quality of the creek running through the property and, but for a house site to be identified on the easement plan, conserve the forest for its value as wildlife habitat.

This forested parcel is best suited for protection by a separate grant because the additional land is a separate parcel, non-contiguous to the existing eased parcel, and will be transferred into separate ownership.

But for the likelihood of separate ownership, the other factors discussed below may be achieved either by the separate easement approach or the hybrid approach.

- The conservation objectives of protecting the creek and wildlife habitat within the additional land are different from those applicable to the farmland protected under the original grant. When conservation objectives differ, then covenants setting controls on land uses also differ. This complicates amendment, risks drafting error due to the added complexity, and makes understanding of the easement's terms by landowners and easement holder more difficult since the amendment must be read side by side with the original document.

- The additional land has or may have improvements in the future necessitating changes in impervious coverage limitations and other restrictive covenants. This likewise complicates the amendment and all that entails.
- A separate grant of easement may be helpful to document and appraise the donation for tax purposes clearly separate from the original donation.

## Hybrid Approach

The hybrid approach overcomes several of the potential problems described above:

- It allows the existing eased property and additional land to be governed by a single easement as in the amendment approach.
- Recording the new grant assures that the conservation easement on the additional land is legally enforceable with indisputable priority over all subsequent interests.
- Amendment and restatement of the original grant in full facilitates easement administration and allows areas with different resources to be subject to different controls within a unified easement plan.

### Step 1: New Grant

The first step is to document the grant of conservation easement on the additional land by recording a new grant. The new grant can be brief because its purpose is limited and it is immediately superseded by the amendment and restatement described in Step 2. (A model document incorporating the following components is provided at the end of this guide.)

#### Provide Information and Convey Easement

First, the new grant will provide basic information to identify the landowners, the easement holder, and the property encumbered by the grant (the additional land). Then the grant must evidence the conveyance of a conservation easement on the additional land from the owners to the holder. See the opening recitals of the [Model Grant of Conservation Easement and Declaration of Covenants](#)

together with sections 1.01 and 1.02(a)) for sample language. Section 1.02(a) may be modified as follows for the sake of brevity:

*By this Grant, the undersigned Owner or Owners, in furtherance of the Conservation Objectives described in the Amended and Restated Grant of Conservation Easement and Declaration of Covenants identified below, grant and convey to Holder an unconditional and perpetual conservation easement upon the Property.*

### **Connect to Original Grant**

Next, add a paragraph explaining the intent of the parties to consolidate the easement on the additional land with the easement created by the original grant (reciting recording information for the original grant).

### **Connect Old and New to Amended and Restated Grant**

Last, the new grant will explain that, on the same date as the grant, the landowners and the easement holder have signed an “Amended and Restated Grant of Conservation Easement and Declaration of Covenants” which is intended to be recorded against both the original eased property and the additional land immediately after the recording of the new grant. Such document will consolidate both easements into a single conservation easement governed by the covenants, terms, and provisions contained in the amended and restated grant.

### **Closing**

Add closing recital, signatures, and acknowledgments per the Model Grant and attach the legal description of the additional land.

## **Step 2: Amendment and Restatement**

The new grant can be reduced to a bare-bones document because all of its governing terms and conditions are set forth in the amended and restated grant which, for that reason, must be completed, signed, and ready for recording at the same time as the new grant.

### **General Directions**

Guidance for amending and restating a grant of easement based upon the Model Grant may be found in the Supplemental Provisions for the Model Grant under the topic “Amending and Restating a Grant of Easement.”

## **Considerations When Consolidating Two Grants**

When amending and restating two grant documents and consolidating two easements, some additional considerations must be kept in mind:

### *Consolidation*

Identify both original grant documents and state the intention to consolidate the separately granted conservation easements into a single, unified conservation easement governed by the amended and restated grant. Prepare and attach an updated easement plan and update the conservation objectives to reflect a conservation strategy to protect the eased property as a unified whole. That strategy will be implemented by controls on the various protection areas set forth in the covenants of the amended and restated grant.

### *Baseline: Existing and Additional*

Consolidation of two easements recorded at different times necessitates the adoption of a new timeline to differentiate between what is existing as of the amendment date and what additions are thereafter permitted. The existing baseline documentation report must be supplemented and updated (or perhaps replaced) as does the definition of “existing improvements.”

These and other considerations are explored in greater depth in the guide [\*Amending and Restating Grants of Conservation Easement: Best Practices to Document Changes\*](#).

## **Summary**

An amendment may be used to add land to an existing conservation easement if its location is closely connected to the already eased property, its resources are substantially the same as the eased property, and complicating factors are minimal.

Otherwise, the choices are a separate easement or, if the parties desire a unified easement governed by a unified plan and easement strategy, then a simple grant of easement on the additional land followed by an amendment and restatement of the two grants consolidating the two easements and their governing terms into one.

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The latest version of this guide and related resources can be found at [WeConservePA.org](http://WeConservePA.org).

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9/1/2020

**Prepared by:**

Name:

Address:


Telephone:

**Return to:**

Name:

Address:

**Tax parcel(s):**



This model grant of conservation easement is designed to be used *only in conjunction* with filing an amended and restated grant that consolidates the easement established by this instrument with an earlier created easement.

See the guide *Adding to Land Under Conservation Easement* published at WeConservePA.org for instructions. (v. 20.08.20)

## Grant of Conservation Easement

THIS GRANT OF CONSERVATION EASEMENT (this “grant”) dated as of \_\_\_\_\_ (the “Easement Date”) is by and between \_\_\_\_\_ (the “undersigned Owner or Owners”) and \_\_\_\_\_ (the “Holder”)

**1. Additional Property**

As of the Easement Date, the undersigned Owner or Owners are the sole owners in fee simple of the property described in exhibit A (the “additional property”) attached to and incorporated into this grant. The additional property is also described as:

Street address:

Municipality:

County:

State: Pennsylvania

Parcel identifier:

Acreage:

**2. Grant of Conservation Easement**

By this grant, the undersigned Owner or Owners, in furtherance of the Conservation Objectives described in the Amended and Restated Grant identified below, grant and convey to Holder an unconditional and perpetual conservation easement upon the additional property.

**3. Original Grant**

(a) **Original Grant.** On [insert date of original grant], [insert names of grantors] executed and delivered to [insert name of grantee] a [insert title of granting document] (the “original grant”), which was recorded on [insert recording date] in the [insert name of recording office] in [insert recording information].

(b) **Original Property.** On the Easement Date, the undersigned Owner or Owners are the sole owners in fee simple of the property subject to the original grant (the “original property”).

**4. Amended and Restated Grant**

On the Easement Date the undersigned Owner or Owners and the Holder have executed and delivered for recording, immediately after this grant, an Amended and Restated Grant of Easement and Declaration of Covenants (the “Amended and Restated Grant”). The purpose of the Amended and Restated Grant is to:

(a) **Single Easement.** Consolidate the conservation easements on the original property and the additional property into a single, unified conservation easement; and

(b) **Single Document.** Amend and restate the original grant and this grant in full so as to set forth in a single document all the covenants, terms, and conditions applicable to the conservation easement on the original property and the additional property from and after the Easement Date

INTENDING TO BE LEGALLY BOUND, the undersigned Owner or Owners and Holder, by their respective duly authorized representatives, have signed and delivered this grant as of the Easement Date.

Witness/Attest:

\_\_\_\_\_ (SEAL)  
Owner's Name:

\_\_\_\_\_ (SEAL)  
Owner's Name:

[NAME OF HOLDER]

\_\_\_\_\_ By: \_\_\_\_\_ (SEAL)  
Name:  
Title:

Instructions for use of this document are found in the guide *Adding to Land Under Conservation Easement* published at [WeConservePA.org](http://WeConservePA.org)

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COMMONWEALTH OF PENNSYLVANIA:

COUNTY OF \_\_\_\_\_ :

ON THIS DAY \_\_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_, known to me (or satisfactorily proven) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purposes therein contained.

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: