

Prepared by:

Name:
Address:
Telephone:

Return to:

Name:
Address:

Tax Parcel(s):

5/27/2016 discussion draft (showing proposed changes) for the 7th edition of the Model Grant of Conservation Easement published by the Pennsylvania Land Trust Association.

Please send your comments to Andy Loza at aloza@conserveland.org.

**GRANT OF CONSERVATION EASEMENT
AND DECLARATION OF COVENANTS**

THIS GRANT OF CONSERVATION EASEMENT AND DECLARATION OF COVENANTS (this "Grant") dated as of _____ (the "Easement Date") is by and between _____ ("the undersigned Owner or Owners") and _____ (the "Holder").

Comment [AL1]: The expanded title more specifically describes the contents of the document; it also closely resembles the titles these documents traditionally held. After a couple decades of experimenting with different titles, it appears that the traditional way makes a lot of sense.

Article 1. Background; Grant to Holder

1.01 Property

The undersigned Owner or Owners are the sole owners in fee simple of the Property described in Exhibit "A" (the "Property"). The Property is also described as:

Street Address:
Municipality:
County: State: Pennsylvania
Parcel Identifier: Acreage:

1.02 Conservation Plan

Attached as Exhibit "B" is a survey or other graphic depiction of the Property (the "Conservation Plan") showing, among other details, the location of one or more of the following areas – the Highest Protection Area, the Standard Protection Area and the Minimal Protection Area.

1.03 Easement; Covenant

(a) Easement. By this Grant, the undersigned Owner or Owners grant and convey to Holder an easement in perpetuity upon the Property (the "Conservation Easement") empowering Holder to block uses of the Property inconsistent with the below described Conservation Objectives. Holder accepts the Conservation Easement and commits to use it as and when needed to advance the Conservation Objectives.

(b) Owner Covenants. By this Grant, the undersigned Owner or Owners, in furtherance of the Conservation Objectives, establish covenants binding upon Owners' interest in the Property, which are set forth in Articles II, III, IV and V. Article VII addresses potential violation of these covenants and remedies.

(c) Holder Covenants. By this Grant, Holder, in furtherance of the Conservation Objectives, establishes covenants binding upon Holder's easement interest in the Property, which are set forth in Article VI.

Comment [AL2]: This new section contains the grant to Holder of the Conservation Easement, previously located in old 5.01, "old" being shorthand for the 6th and current edition of the model. This new structure more clearly identifies the covenants established in conjunction with the grant and better educates readers on the nature of the document.

4.031.04 Conservation Objectives

~~By this Grant, the undersigned Owner or Owners impose a conservation servitude (the "Conservation Easement") on the Property that provides different levels of protection for the areas shown on the Conservation Plan so as to achieve the goals and resource protection and area-specific objectives (collectively, the "Conservation Objectives") for the Property set forth below are as follows:~~

Comment [AL3]: The Conservation Objectives were rewritten after expansive outreach to users and feedback regarding them.

Comment [AL4]: This sentence is no longer needed due to the creation of the new 1.03.

Comment [AL5]: The use of different terms—goals and objectives—for what are all purposes of the easement caused some confusion. "Area-specific objective" describes in plain English the nature of the purposes contained in subsection (b).

(a) Resource Protection Objectives

- (1) **Water Resources.** To maintain and improve the quality of water resources, both surface and groundwater, within, around and downstream of the Property.
- (2) **Biological Resources.** To protect and improve the quality of natural habitat for animals, plants, fungi and other organisms, particularly Native Species|
- (3) **Soil Resources.** To prevent the loss and depletion of soil on the Property|
- (4) **Scenic Resources.** To protect scenic views of the Property visible from public rights-of-way and other public access points outside the Property|
- (5) **Ecosystem Services.** To absorb within the Property rainwater that otherwise might cause erosion and flooding downstream of the Property; to sequester carbon in plants and soil to mitigate rising atmospheric carbon levels; and to support other healthy ecosystem processes|
- (2) **Forest, Woodland and Other Vegetative Resources.** To perpetuate and foster the growth of a healthy and unfragmented forest or woodland; to maintain a continuous canopy of vegetation with multi-tiered understory of trees, shrubs, wildflowers and grasses; to support healthy ecosystem processes; and to trap air pollution particulates for healthier air and sequester carbon in trees and soil in order to mitigate rising atmospheric carbon levels.
- (3) **Wildlife Resources.** To maintain and improve the quality of wildlife habitat; to protect breeding sites; to promote biodiversity and Native Species; to preserve large intact areas of wildlife habitat, connect patches of wildlife habitat and secure migration corridors. Large habitat patches typically support greater biodiversity than small patches; migration corridors enable wildlife to move to meet nutritional and reproductive needs and facilitate the migration of species in response to changes in environmental conditions.
- (4) **Scenic Resources.** To preserve the relationship of scenic resources within the Property to natural and scenic resources in its surrounds and to protect scenic vistas visible from public rights-of-way and other public access points in the vicinity of the Property.
- (5) **Sustainable Land Uses.** To ensure that Agriculture, Forestry, and other uses, to the extent that they are permitted, are conducted in a manner that will neither diminish the biological integrity of the Property nor deplete natural resources over time nor lead to an irreversible disruption of ecosystems and associated processes. Agricultural and Forestry activities are regulated so as to protect soils of high productivity; to ensure future availability for Sustainable uses; and to minimize adverse effects of Agricultural and Forestry uses on water resources described in the Conservation Objectives|
- (6) **Compatible Land Use and Development.** Certain areas have been sited within the Property to accommodate existing and future development taking into account the entirety of the natural potential of the Property as well as its scenic resources|

(b) Goals Area-Specific Objectives.

- (7)(1) **Highest Protection Area.** To protect and enhance the richness of biodiversity and natural habitat, keeping the area wild or undisturbed in character natural resources within the Highest Protection Area so as to keep them in an undisturbed state except as required to promote and maintain a diverse community of predominantly Native Species|
- (8)(2) **Standard Protection Area.** To promote good stewardship of the Standard Protection Area so that its soil and other natural resources land so that it will always be able to support open space activities including Sustainable Agriculture or Sustainable Forestry|
- (3) **Minimal Protection Area.** To accommodate, subject to moderate constraints, a wide variety of activities, uses and Improvements, confining them to the Minimal Protection Area where they will not be detrimental to the achievement of the Conservation Objectives| promote compatible land use and development within the Minimal Protection Area so that it will be available for a wide variety of activities, uses and Additional Improvements subject to the minimal constraints necessary to achieve Conservation Objectives outside the Minimal Protection Area.

Comment [AL6]: This objective merges the former “Forest...” and “Wildlife Resources” objectives (which some felt carried detail that should be prepared by users for the specific project). Reference to ecosystem services including carbon sequestration is moved to the new “Ecosystem Services” objective below. As before, it’s expected that users will elaborate on the biological resources particular to their projects; the commentary provides suggestions (and will be expanded to include some of the content deleted here).

Comment [AL7]: Protection of soil was previously buried under “Sustainable Land Uses.” It is now clearly presented as a key objective (which can be achieved through Sustainable activities).

Comment [AL8]: This item was rewritten in plainer English.

Comment [AL9]: All the resource protection objectives are arguably providing ecosystem services. The services described under the label “Ecosystem Services” rely on a constellation of resources to provide their conservation and public benefits and don’t easily slot into a particular resource protection objective listed above. Carbon sequestration was previously addressed under the Forest, etc. label; reference to stormwater absorption is new to the 7th.

Comment [AL10]: Is the aim of conservation sustainable use or resource protection? Is it possible to disentangle one from the other? Sustainable uses are a means to achieving soil and water resource protections; soil and water protection in turn provide the resources for sustainable use. This rewrite clearly frames the Resource Protection Objectives as...resource protection objectives. Sustainable uses, of course still have a fundamental position, referenced both in the SPA objective and in the restrictive covenants.

Comment [AL11]: This item was identified as largely redundant with the Minimal Protection Area objective.

Comment [AL12]: This rewrite places emphasis on biodiversity and habitat.

Comment [AL13]: This rewrite more closely aligns the objective with the covenants for the Standard Protection Area.

Comment [AL14]: This rewrite draws from the former “Compatible Land Use and Development” objective, eliminating redundancy.

4.041.05 Baseline Documentation

As of the Easement Date, the undersigned Owner or Owners and Holder have signed for identification purposes the report (the “Baseline Documentation”), to be kept on file at the principal office of Holder, that contains an original, full-size version of the Conservation Plan and other information sufficient to identify on the ground the protection areas identified in this Article; that describes Existing Improvements; that identifies

the conservation resources of the Property described in the Conservation Objectives; and that includes, among other information, photographs depicting existing conditions of the Property as of the Easement Date.

1.051.06 Structure of Grant ~~Defined Terms~~

~~In Articles II, III and IV, the undersigned Owner or Owners impose restrictive covenants on the Property in support of the Conservation Objectives. Then, in Article V, they vest in Holder a number of rights for the purpose of advancing the Conservation Objectives. Article VI addresses potential violations and remedies. Article VII addresses miscellaneous other matters. Initially capitalized terms not defined in this Article I are defined in Article 9~~VIII~~.~~

Comment [AL15]: The structure of the document is now described in the new 1.03.

1.061.07 Federal Tax Items

The terms of this section supplement and, to the extent of any inconsistency, supersede provisions set forth elsewhere in this Grant.

Comment [AL16]: This statement provides additional assurance that the document is compliant with federal requirements for tax deductions.

- (a) **Qualified Conservation Contribution.** The Conservation Easement has been donated in whole or in part by the undersigned Owner or Owners. The donation of the Conservation Easement by this Grant is intended to qualify as a charitable donation of a partial interest in real estate (as defined under §170(f)(3)(B)(iii) of the Code) to a qualified organization (a “Qualified Organization”) as defined in §1.170(A-14(c)(1) of the Regulations. If the Conservation Easement is transferred to any Person, that Person must commit to hold the Conservation Easement exclusively for conservation purposes as defined in the Regulations.
- (b) **Public Benefit.** The undersigned Owner or Owners have granted the Conservation Easement to provide a significant public benefit (as defined in §1.170A-14(d)(4) of the Regulations). In addition to the public benefits described in the Conservation Objectives, the Baseline Documentation identifies public policy statements and other factual information supporting the significant public benefit of the Conservation Easement.
- (c) **Mineral Interests.** No Person has retained a qualified mineral interest in the Property of a nature that would disqualify the Conservation Easement for purposes of §1.170A-14(g)(4) of the Regulations. From and after the Easement Date, the grant of any such interest is prohibited and Holder has the right to prohibit the exercise of any such right or interest if granted in violation of this provision.
- (d) **Notice Required under Regulations.** To the extent required for compliance with §1.170A-14(g)(5)(ii) of the Regulations, and only to the extent such activity is not otherwise subject to Review under this Grant, Owners agree to notify Holder before exercising any reserved right that may have an adverse impact on the conservation interests associated with the Property.
- (e) **~~Property~~ Compensation Right.** In accordance with §1.170A-14(g)(6) of the Regulations, the undersigned Owner or Owners agree that the grant of ~~this the~~ Conservation Easement gives rise to a property right, immediately vested in ~~the~~ Holder, that entitles ~~the~~ Holder to compensation upon extinguishment of the easement. The fair market value of the ~~property~~ right is to be determined in accordance with the Regulations; i.e., it is at least equal to the proportionate value that the Conservation Easement as of the Easement Date bears to the value of the Property as a whole as of the Easement Date (the “Proportionate Value”). If the Proportionate Value exceeds the compensation otherwise payable to Holder under ~~Article VI~~ this Grant or Applicable Law, Holder is entitled to payment of the Proportionate Value. Holder must use any funds received on account of the Proportionate Value for conservation purposes (as that phrase is defined in the Regulations).
- (f) **Qualification under §2031(c) of the Code.** To the extent required to qualify for exemption from federal estate tax under §2031(c) of the Code, ~~and only to the extent such activity is not otherwise prohibited or limited under this Grant,~~ Owners agree that commercial recreational uses are not permitted within the Property.
- (g) **Acknowledgment of Donation.** Except for such monetary consideration (if any) as is set forth in this Article, Holder acknowledges that no goods or services were received in consideration of this Grant.
- (h) **No Representation of Tax Benefits.** The undersigned Owner or Owners represent, warrant and covenant to Holder that:
 - (1) The undersigned Owner or Owners have not relied upon any information or analyses furnished by Holder with respect to either the availability, amount or effect of any deduction, credit or other benefit to Owners under Applicable Law; or the value of the Conservation Easement or the Property.

Comment [AL17]: Use of the word “property” (as contrasted with the defined term “Property”) is deleted in this subsection as well as later in the document so that if users universally change “Property” to “Conservation Area,” they don’t mistakenly change the meaning of the provision.

- (2) The undersigned Owner or Owners have relied solely upon their own judgment and/or professional advice furnished by the appraiser and legal, financial and accounting professionals engaged by the undersigned Owner or Owners. If any Person providing services in connection with this Grant or the Property was recommended by Holder, the undersigned Owner or Owners acknowledge that Holder is not responsible in any way for the performance of services by these Persons.
- (3) This Grant is not conditioned upon the availability or amount of any deduction, credit or other benefit under Applicable Law.

4.071.08 Beneficiaries

~~This Grant does not confer any rights or remedies upon any Person other than Owners, Holder, and Persons (the "Beneficiaries"), if any, specifically named in this Grant. No other Persons are vested with any rights, whether arising under this Grant or otherwise under Applicable Law. No Beneficiary is identified in this Grant.~~

Comment [AL18]: The definition of Beneficiary is now located in the Glossary.

4.081.09 Consideration

The undersigned Owner or Owners acknowledge receipt, as of the Easement Date, of the sum of \$1.00 in consideration of this Grant.

4.091.10 Superior to all Liens

The undersigned Owner or Owners warrant to Holder that the Property is, as of the Easement Date, free and clear of all Liens or, if it is not, that Owners have obtained and recorded in the Public Records the legally binding subordination of any Liens affecting the Property as of the Easement Date.

Comment [AL19]: This content moved from old 5.01(b).

Article 2. Transfer; Subdivision

2.01 Prohibitions

~~All of the following are prohibited except as set forth in §2.02~~

- (a) Transfer of portion of Property. Transfer of ownership, possession or use of a Lot independent of the remainder of the Property;
- (b) Subdivision. Change in the boundary of a Lot or other Subdivision of the Property;
- (c) Density calculation. Use of the Property or the Grant in calculations under Applicable Law to increase density or intensity of land use outside the Property.
- (d) Transfer of rights. Transfer of development rights or other rights granted or allocated to the Property in support of development outside the Property.

~~No transfer of a Lot independent of the remainder of the Property; no change in the boundary of any Lot; and no other Subdivision is permitted, except as set forth below.~~

Comment [AL20]: The notice and related provisions of old 2.01 moved to a more appropriate location—a new 8.03.

Comment [AL21]: The prohibitions previously contained in old 2.02 and 4.02 are consolidated and itemized in this section.

2.02 Permitted Changes

The following changes are permitted:

- (a) **Lots within Property.** If the Property contains more than one Lot, Subdivision to (1) merge two or more Lots into one; or (2) subject to Review, reconfigure any one or more of the boundaries of such Lots except a boundary of the Property as described in Exhibit "A".
- (b) **Transfer to Qualified Organization.** Subject to Review, creation of a Lot for transfer to a Qualified Organization for park, nature preserve, public trail or other conservation purposes approved by Holder after Review.
- (c) **Transfer of Rights of Possession or Use.** Subject to Review, transfer of possession or use (but not ownership) of one or more portions of the Property, including subsurface portions of the Property, for purposes permitted under, and subject to compliance with, the terms of this Grant. Leases of space within Improvements are not subject to Review.

2.03 Requirements

- (a) **Establishment of Lots; Allocations.** Prior to transfer of a Lot following a Subdivision, Owners must (1) furnish Holder with the plan of Subdivision approved under Applicable Law and legal description of the each Lot created or reconfigured by the Subdivision; (2) mark the boundaries of each Lot with permanent

markers; and (3) allocate in a document recorded in the Public Records those limitations applicable to more than one Lot under this Grant. This information will become part of the Baseline Documentation incorporated into this Grant.

- (b) **Amendment.** Holder may require Owners to execute an Amendment of this Grant to reflect any change to the description of the Property set forth in Exhibit "A" or any other changes and allocations resulting from Subdivision that are not established to the reasonable satisfaction of Holder by recordation in the Public Records of the plan of Subdivision approved under Applicable Law.

Article 3. **Improvements** Highest Protection Area

3.01 Improvements

Improvements within the ~~Property~~ Highest Protection Area are prohibited except as permitted below in this Article.

- (a) **Existing Improvements.** Any Existing Improvement may be maintained, repaired and replaced in its existing location. Existing Improvements may be expanded or relocated if the expanded or relocated Improvement complies with requirements applicable to Additional Improvements of the same type.
- (b) **Existing Agreements** Servitudes. Improvements that Owners are required to allow ~~under because of an Existing Agreements~~ Servitude are permitted.
- (c) **Additional Improvements.** The following Additional Improvements are permitted:
 - (1) Fences, walls and gates, not to exceed four (4) feet in Height or such greater Height as is approved by Holder after Review.
 - (2) Regulatory Signs.
 - (3) Habitat enhancement devices such as birdhouses and bat houses.
 - (4) Trails covered (if at all) by wood chips, gravel, or other highly porous surface.
 - (5) Subject to Review, footbridges, stream crossing structures, ~~and stream access structures, unenclosed tree stands, and hunting blinds.~~
 - (6) Subject to Review, Access Drives and Utility Improvements to service Improvements within the Property but only if there is no other reasonably feasible means to provide access and utility services to the Property.
 - (7) Subject to Review, Improvements located wholly beneath the surface at a depth at which there can be no impairment of water or other resources described in the Conservation Objectives and requiring no surface disturbance or Access Drives during initial Construction or thereafter. ~~Extraction Improvements and Improvements for generating and transmitting Renewable Energy but only if located wholly beneath the surface at a depth at which there can be no impairment of water or other resources described in the Conservation Objectives. No Access Drives to service any such Improvements are permitted.~~

Comment [AL22]: Due to user requests and subsequent overwhelming user support for the concept, the articles titled "Improvements" and "Activities; Uses; Disturbance of Resources" have been reorganized as three articles, each article covering the Improvements and activities permitted in one of the three potential protection areas. In these new Articles 3, 4, and 5, only substantive changes to the text are shown, not the necessary changes in headings and re-arrangement of the content.

Comment [AL23]: A servitude is more specifically the legal construct that would result in an Improvement being allowed despite a recorded grant of easement.

Comment [AL24]: This rewrite avoids the necessity of including Extraction Improvements as a defined term.

3.02 ~~Density Issues under Applicable Law~~

- ~~(a) **Promoting Development outside the Property**
Neither the Property nor this Grant may be used under Applicable Law to increase density or intensity of use or otherwise promote the development of other lands outside the Property.~~
- ~~(b) **Transferable Development Rights**
Owners may not transfer for use outside the Property (whether or not for compensation) any development rights allocated to the Property under Applicable Law.~~

Comment [AL25]: This content is consolidated at 2.01.

3.03 Activities and Uses

Activities and uses within the Highest Protection Area are ~~limited-prohibited~~ to those ~~except as~~ permitted below in this Article and provided in any case that the intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives. ~~The following activities and uses are permitted within the Highest Protection Area:~~

- (a) **Existing Agreements** Servitudes. Activities, ~~and uses and Construction~~ that Owners are required to allow ~~under because of an Existing Agreements~~ Servitudes are permitted.

Comment [AL26]: The phrasing is adjusted simply to match that of the prohibition on Improvements. The new wording doesn't change the meaning of the provision.

Comment [AL27]: "Construction" is deleted because it is redundant.

(b) **Resource Management and Disturbance of Resources.** The following activities and uses are permitted:

- (1) Cutting trees, Construction or other disturbance of resources, including removal of Invasive Species, to the extent reasonably prudent to remove, mitigate or warn against an unreasonable risk of harm to Persons, ~~property-their belongings,~~ or health of Native Species on or about the Property. Owners must take such steps as are reasonable under the circumstances to consult with Holder prior to taking actions that, but for this provision, would not be permitted or would be permitted only after Review.
- (2) ~~Planting a diversity of and maintaining~~ Native Species of trees, shrubs and herbaceous plant materials ~~in accordance with Best Management Practices or, subject to Review, planting and maintaining other vegetation (excluding Invasive Species).~~
- (3) Subject to Review, removal of vegetation to accommodate replanting with a diversity of Native Species of trees, shrubs and herbaceous plant materials.
- ~~(4) Removal and disturbance of soil, rock and vegetative resources to the extent reasonably necessary to accommodate Construction of Improvements within the Highest Protection Area with restoration as soon as reasonably feasible by replanting with a diversity of Native Species of trees, shrubs and herbaceous plant materials in accordance with Best Management Practices.~~
- ~~(5)~~(4) Vehicular use in the case of emergency and, subject to applicable limitations (if any), in connection with activities or uses permitted within the Highest Protection Area.
- ~~(6)~~(5) Except within Wet Areas, cutting or removing trees, standing or fallen, but only if the aggregate inside bark diameter of stumps (one foot above ground on the uphill side) does not exceed 200 inches per year and only for use within the Property.

(6) Construction of permitted Improvements subject to restoration of soil and vegetation disturbed by such activity. Not more than 200 square feet of vegetative cover may be disturbed at any time without the approval of Holder after Review. Holder's approval may be conditioned, among other things, upon Owners' agreement to implement certain protective measures during the course of Construction and to complete the restoration within a period of time reasonably acceptable to Holder. The phrase "at any time" means that the maximum disturbance area includes area previously disturbed until such time as replacement plant material within that area has survived an entire growing season.

- (7) Subject to Review, extraction of natural gas (regardless of source) or oil, and injection or release of water and other substances to facilitate such extraction, but only at subterranean depths at which there can be no impairment of water or other resources described in the Conservation Objectives. No surface activities or uses, including Construction activities, incident to such extraction are permitted.
- (8) Generation of Renewable Energy and transmission of such energy if and to the extent Improvements for that purpose are permitted under this Article III.
- (9) Other resource management activities that Holder, without any obligation to do so, determines are consistent with maintenance or attainment of Conservation Objectives and are conducted in accordance with the Resource Management Plan approved for that activity after Review.

(c) **Release and Disposal.** The following activities and uses are permitted:

- (1) Application of manure and plant material, both well composted, and, subject to compliance with manufacturer's recommendations, other substances to promote the health and growth of vegetation. (These permitted substances do not include sludge, biosolids, septic system effluent and related substances.)
- (2) Piling of brush and other vegetation to the extent reasonably necessary to accommodate activities or uses permitted within the Highest Protection Area.

(d) **Other Activities.** Activities are permitted that do not require Improvements other than trails and do not materially and adversely affect maintenance or attainment of Conservation Objectives such as the following: (1) walking, horseback riding on trails, cross-country skiing, bird watching, nature study, fishing and hunting; and (2) educational or scientific activities consistent with and in furtherance of the Conservation Objectives. Vehicular use is not permitted in connection with the activities permitted under this subsection, unless Holder, without any obligation to do so, approves the use after Review.

Comment [AL28]: Previously item (6) in the list.

Comment [AL29]: This content is consolidated in the new item (6).

Comment [AL30]: Not much Construction typically occurs in the HPA and its impact is generally miniscule. Because of this and the practice of making Improvements likely to have impact subject to Review, no-one for the past decade noticed that the HPA lacked a provision directly addressing Construction (as contrasted with the Improvements to be constructed). This new provision addresses this small gap in guidance to the Owners and Holder.

Article 4. Standard Protection Area ~~Activities; Uses;~~ ~~Disturbance of Resources~~

4.01 Improvements

Improvements within the Standard Protection Area are prohibited except as permitted below in this Article.

- (a) ~~Permitted under Preceding Sections~~ Article. Any Improvement permitted under ~~a~~ the preceding ~~section~~ of this Article is permitted in the Standard Protection Area.
- (b) **Additional Improvements.** The following Additional Improvements are permitted:
- (1) Agricultural Improvements.
 - (2) Site Improvements reasonably required for activities and uses permitted within the Standard Protection Area.
 - (3) Subject to Review, Site Improvements servicing other areas of the Property, if not reasonably feasible to install entirely within Minimal Protection Area.
 - (4) Subject to Review, Improvements for generating and transmitting Renewable Energy that Holder, without any obligation to do so, determines are consistent with maintenance or attainment of Conservation Objectives.
- (c) **Limitations on Additional Improvements.** Additional Improvements permitted within the Standard Protection Area are further limited as follows:
- (1) The Height of Improvements must not exceed thirty-five (35) feet except for, subject to Review, silos and Improvements for generating Renewable Energy.
 - (2) Fences remain limited as in the Highest Protection Area.
 - (3) Impervious Coverage must not exceed a limit of 500 square feet per roofed Improvement. Impervious Coverage must not exceed a limit of 1500 square feet in ~~the aggregate total~~ for all Improvements within the Standard Protection Area. The limitation on ~~aggregate total~~ Impervious Coverage excludes Impervious Coverage associated with ponds and Access Drives.
 - (4) Access Drives are limited to a driving surface not to exceed fourteen (14) feet in width and are further limited, in ~~the aggregate total~~, to 500 feet in length.
 - (5) Ponds are limited, in ~~the aggregate total~~, to 1500 square feet of Impervious Coverage.
 - (6) In addition to Regulatory Signs, signs are limited to a maximum of eight (8) square feet per sign and twenty-four (24) square feet in ~~the aggregate total~~ for all signs within the Property.
 - (7) Utility Improvements must be underground or, subject to Review, may be aboveground where not reasonably feasible to be installed underground.
 - (8) The following Improvements are not permitted unless Holder, without any obligation to do so, approves after Review: (A) exterior storage tanks for petroleum or other hazardous or toxic substances (other than reasonable amounts of fuel for activities and uses within the Property permitted under this Grant); and (B) Site Improvements servicing activities, uses or Improvements not within the Property.
 - (9) Improvements in connection with recreational and open-space activities and uses (excepting Utility Improvements, which are subject to limitations elsewhere in this section) are limited to Site Improvements not exceeding nine (9) feet in Height and 500 square feet of Impervious Coverage in ~~the aggregate total~~.

Comment [AL31]: "In total" is plainer English than "in the aggregate."

4.02 Activities and Uses

Activities and uses within the Standard Protection Area are ~~limited prohibited to those except as~~ permitted below in this Article ~~and provided in any case that the intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives and~~ The following activities and uses are permitted within the Standard Protection Area so long as no Invasive Species are introduced.

- (a) **Permitted under Preceding Sections** Article. Activities and uses permitted under the preceding ~~sections~~ of this Article are permitted within the Standard Protection Area.
- (b) **Agricultural Uses.** Sustainable Agricultural ~~uses and activities~~ that maintains continuous vegetative cover and, if conducted in accordance with a Soil Conservation Plan furnished to Holder, Sustainable

Comment [AL32]: The phrasing is adjusted to match that of the prohibition on Improvements. The new wording doesn't change the meaning of the provision.

Agricultural uses that does not maintain continuous vegetative cover are permitted. In either case, the limitations set forth below apply:

- (1) Within Wet Areas, Agriculture is subject to Review to ensure that Agricultural uses in close proximity to water resources are chosen and practiced so as not to risk harm to those resources; within 15 feet of water's edge. Agriculture is prohibited~~grazing is permitted only if Holder approves after Review~~.
 - (2) Within Steep Slope Areas, the Soil Conservation Plan is subject to Review ~~by Holder~~ to determine that measures have been included to minimize adverse effects on natural resources such as a conservation tillage system, contour farming or cross slope farming.
 - (3) Agricultural uses that involve removal of soil from the Property (such as sod farming and ball-and-burlap nursery uses) are permitted only if conducted in accordance with a Resource Management Plan approved by Holder after Review that provides for, among other features, a soil replenishment program that will qualify the activity as a Sustainable Agricultural use.
 - (4) Woodland Areas may not be used for or converted to Agricultural uses unless Holder, without any obligation to do so, approves after Review.
- (c) **Forestry Uses.** Sustainable Forestry in accordance with a Resource Management Plan approved after Review is permitted.
- (d) **Other Disturbance of Resources.** The following activities and uses are permitted:
- (1) Subject to Review, removal or impoundment of water for activities and uses permitted within the Property but not for sale or transfer outside the Property.
 - (2) Removal of vegetation and other Construction activities reasonably required to accommodate permitted Improvements ~~permitted within the Standard Protection Area~~.
 - (3) Mowing, planting and maintenance of lawn, garden and landscaped areas.
- (e) **Release and Disposal.** The following activities and uses are permitted:
- (1) Piling and composting of biodegradable materials originating from the Property in furtherance of Agricultural Uses within the Property permitted under this Article. Manure piles must be located so as not to create run-off into Wet Areas.
 - (2) Subject to Review, disposal of sanitary sewage effluent from Improvements permitted within the Property if not reasonably feasible to confine such disposal to Minimal Protection Area.
- (f) **Other Activities.** Outdoor recreational and other open-space activities are permitted that (1) are limited in time, place and intensity so as not to interfere with Conservation Objectives and (2) do not require motorized vehicles except, subject to Review, as ancillary support to the primary activity. Activities that require earth disturbance or that will result in more than a *de minimis* reduction in soil permeability are subject to Review~~Recreational and open space activities and uses that (i) do not require Improvements other than those permitted within the Standard Protection Area; (ii) do not materially and adversely affect scenic views and other values described in the Conservation Objectives; and (iii) do not require motorized vehicular use other than for resource management purposes.~~

Comment [AL33]: The former wording, with the exception of grazing, didn't limit Agriculture in Wet Areas. This new wording, developed with attention to the research coming out of the Stroud Water Research Center and elsewhere, is intended to better ensure the protection of water quality per the Conservation Objectives. (Review the definition of Wet Areas to better understand the provision.)

Comment [AL34]: This change permits a broader range of outdoor recreational activities so long as Improvements associated with them abide by the limitations on Improvements including the Impervious Coverage constraints. The change also ensures that the recreational activities don't unduly harm water quality or the soils that could support forestry and agriculture.

Article 5. Minimal Protection Area

5.01 Improvements

Improvements within the Minimal Protection Area are prohibited except as permitted below in this Article.

- (a) **Permitted under Preceding Sections/Articles.** Any Improvement permitted under a preceding ~~section of this~~ Article is permitted.
- (b) **Additional Improvements.** The following Additional Improvements are permitted:
 - (1) Residential Improvements.
 - (2) Site Improvements servicing activities, uses or Improvements permitted within the Property. Signs, fences, storage tanks and other Site Improvements remain limited as set forth for the Standard Protection Area.

- (c) **Limitations on Additional Improvements.** Additional Improvements permitted within the Minimal Protection Area are further limited as follows:
- (1) Not more than one (1) Improvement (whether an Existing Improvement or Additional Improvement) may contain Dwelling Units (if any) permitted under ~~Article IV~~this Article.
 - (2) Additional Improvements are subject to a Height limitation of thirty-five (35) feet. Subject to Review, Improvements for generating Renewable Energy may exceed this Height limitation.

5.02 Activities and Uses

Activities and uses within the Minimal Protection Area are prohibited except as are limited to those permitted below in this Article and provided in any case that the intensity or frequency of the activity or use does not materially and adversely affect maintenance or attainment of Conservation Objectives and no Invasive Species are introduced.

- (a) **Permitted under Preceding Sections**~~Articles~~. Activities and uses permitted ~~under preceding sections of this Article~~under the preceding Articles are permitted within the Minimal Protection Area.
- (b) **Disturbance of Resources.** Disturbance of resources within the Minimal Protection Area is permitted for purposes reasonably related to activities or uses permitted within the Minimal Protection Area. ~~Introduction of Invasive Species remains prohibited.~~
- (c) **Release and Disposal**
- (1) Disposal of sanitary sewage effluent from Improvements ~~permitted~~ within the Property is permitted.
 - (2) Other piling of materials and non-containerized disposal of substances and materials are permitted but only if such disposal is permitted under Applicable Law; does not directly or indirectly create run-off or leaching outside the Minimal Protection Area; and does not otherwise adversely affect Conservation Objectives ~~applicable to the Minimal Protection Area including those pertaining to scenic views~~.
- (d) **Residential and Other Uses**
- (1) Residential use is permitted but limited to not more than one (1) Dwelling Unit.
 - (2) An activity or use is permitted if: (A) from any vantage point outside the Minimal Protection Area, the activity or use is not distinguishable from an activity or use (excluding Construction) otherwise permitted under this Article; and (B) the activity or use has no greater adverse impact on resources protected by the Conservation Objectives than such permitted uses.
 - ~~(2)(3) Subject to Review, other activities and uses are permitted that have no greater adverse impact on resources protected by the Conservation Objectives than an activity or use (excluding Construction) otherwise permitted under this Article. Any occupation, activity or use is permitted if wholly contained within an enclosed Residential or Agricultural Improvement. The phrase "wholly contained" means that neither the primary activity or use or any accessory uses such as parking or signage, are visible or discernable outside the Improvement; however, subject to Review, exterior vehicular parking and signage accessory to such uses may be permitted by Holder.~~

Comment [AL35]: This change provides the Owners with greater flexibility without detriment to the Conservation Objectives per the MPA area-specific objective.

Article 6. Rights and Duties of Holder and Beneficiaries

6.01 ~~Grant to Holder~~ Covenants

- ~~(a) **Grant in Perpetuity**~~
~~By signing this Grant and unconditionally delivering it to Holder, the undersigned Owner or Owners, intending to be legally bound, grant and convey to Holder a Conservation Easement over the Property in perpetuity for the purpose of advancing the Conservation Objectives and administering and enforcing the restrictions and limitations set forth in Articles II, III, and IV in furtherance of the Conservation Objectives.~~
- ~~— **Superior to all Liens**~~
In support of the Conservation Objectives, Holder declares the following covenants binding upon its easement interest in the Property:

Comment [AL36]: The content of this subsection moved in slightly modified form to the new 1.03.

Comment [AL37]: This subsection's content moved to the new 1.10.

- (a) Exercise of Powers. Holder must exercise the powers granted to it by this Grant to protect the Property from uses inconsistent with the Conservation Objectives to the full extent permitted to do so under the terms of the Grant.
- (b) Must be Qualified Organization. Holder must be and remain at all times a Qualified Organization and must not transfer the Conservation Easement or otherwise assign its rights or responsibilities under this Grant to any Person other than a Qualified Organization committed to upholding the Conservation Objectives.
- (c) Proceeds Used for Conservation Purposes. Holder must use any funds received on account of the release, termination or extinguishment of the Conservation Easement in whole or in part in furtherance of its charitable conservation purposes.
- (d) Forfeiture Remedy. If Holder fails to abide by the covenants of this section, a Beneficiary of the Conservation Easement or the Commonwealth of Pennsylvania may petition a court of competent jurisdiction to order the Conservation Easement transferred to a Qualified Organization ready, willing and able to abide by such covenants.

Comment [AL38]: This covenant replaces, in part, old 7.03(a).

Comment [AL39]: 1.07(e) addresses this topic from a strictly tax law conformance perspective.

Comment [AL40]: This covenant replaces the old 6.01 Breach of Duty and clarifies the process for transfer.

6.02 Rights and Duties of Holder

The items set forth below are both rights and duties vested in Holder by this Grant:

- (a) **Enforcement.** To enter the Property to investigate a suspected, alleged or threatened violation of the covenants and, if found, to enforce the terms of this Grant by exercising Holder's remedies in Article ~~V~~ this Grant.
- (b) **Inspection.** To enter and inspect the Property for compliance with the requirements of this Grant upon reasonable notice, in a reasonable manner and at reasonable times.
- (c) **Review.** To exercise rights of Review in accordance with the requirements of this Article.
- (d) **Interpretation.** To interpret the terms of this Grant and, at the request of Owners, furnish Holder's explanation of the application of such terms to then-existing, proposed or reasonably foreseeable conditions within the Property.

6.03 Other Rights of Holder

The items set forth below are also rights vested in Holder by this Grant; however, Holder, in its discretion, may or may not exercise them:

- (a) **Amendment.** To enter into an Amendment with Owners if Holder determines that the Amendment: ~~will not (1) will not impair Holder's power, enforceable in perpetuity, to block land uses within the Property inconsistent with, is consistent with and in furtherance of~~ the Conservation Objectives; (2) will not result in any private benefit prohibited under the Code; and (3) will be consistent with ~~otherwise conforms to~~ Holder's policy with respect to Amendment as of the applicable date of reference.
- (~~a~~)**(b) Signs.** To install one or more signs within the Property identifying the interest of Holder or ~~one or more~~ Beneficiaries in the Conservation Easement. Any signs installed by Holder do not reduce the number or size of signs permitted to Owners under Article ~~III~~ this Grant. Signs are to be of the customary size installed by Holder or Beneficiary, as the case may be, and must be installed in locations readable from the public right-of-way and otherwise reasonably acceptable to Owners.
- (~~b~~)**(c) Proceedings.** To assert a claim, defend or intervene in, or appeal, any proceeding under Applicable Law that (1) pertains to the impairment of Conservation Objectives; or (2) may result in a transfer, Improvement or use that violates the terms of this Grant.

6.04 Review

The following provisions are incorporated into any provision of this Grant that is subject to Review:

- (a) **Notice to Holder.** At least thirty (30) days before Owners begin or allow any Improvement, Construction, activity or use that is subject to Review, Owners must notify Holder of ~~the their proposed~~ change including with the notice such information as is reasonably sufficient to comply with Review Requirements and otherwise describe the ~~change proposal~~ and its potential impact on ~~natural resources within the Property~~ the Conservation Objectives.
- (b) **Notice to Owners.** Within thirty (30) days after receipt of Owners' notice, Holder must notify Owners of Holder's determination to (1) accept Owners' proposal in whole or in part; (2) ~~reject~~ Owners' proposal

Comment [AL41]: The word "activity" encompasses "Construction."

Comment [AL42]: The Conservation Objectives may cover scenic resources, which a reader may or may not interpret as being covered by the term "natural," as well as cultural resources, such as elements of an historic battlefield, which the Conservation Objectives may have been expanded to include.

in whole or in part; (3~~iii~~) accept Owners' proposal conditioned upon compliance with conditions imposed by Holder; or (4~~iv~~) reject Owners' ~~notice-proposal~~ notice for insufficiency of information on which to base a determination. If Holder gives conditional acceptance under clause (3~~iii~~), commencement of the proposed Improvement, activity, ~~use of Construction or use~~ constitutes acceptance by Owners of all conditions set forth in Holder's notice.

(c) **Failure to Notify.** If Holder fails to notify Owners as required in the preceding subsection, the proposal set forth in Owners' notice is deemed approved.

(d) **Standard of Review**

- (1) The phrase "unless Holder, without any obligation to do so," in relation to an approval or determination by Holder, means that, in that particular case, Holder's approval is wholly discretionary and may be given or withheld for any reason or no reason.
- (2) In all other cases, Holder's approval is not to be unreasonably withheld. It is not unreasonable for Holder to disapprove a proposal that may adversely affect ~~natural~~ resources described in the Conservation Objectives or that is otherwise inconsistent with maintenance or attainment of Conservation Objectives.

6.05 Reimbursement

Owners must reimburse Holder for the costs and expenses of Holder reasonably incurred in the course of performing its duties with respect to this Grant other than monitoring in the ordinary course. These costs and expenses include the allocated costs of employees of Holder.

Article 7. Violation; Remedies

~~7.01 Breach of Duty~~

~~If Holder fails to enforce the terms of this Grant, or ceases to qualify as a Qualified Organization, then the Conservation Easement may be transferred to another Qualified Organization by a court of competent jurisdiction.~~

Comment [AL43]: This Holder covenant is consolidated with other Holder covenants at 6.01(d).

~~7.027.01~~ **Violation**

If Holder determines that the terms of this Grant are being or have been violated or that a violation is threatened or imminent then the provisions of this section will apply:

- (a) **Notice.** Holder must notify Owners of the violation. Holder's notice may include its recommendations of measures to be taken by Owners to cure the violation and restore features of the Property damaged or altered as a result of the violation.
- (b) **Opportunity to Cure.** Owners' cure period expires thirty (30) days after the date of Holder's notice to Owners subject to extension for the time reasonably necessary to cure but only if all of the following conditions are satisfied:
 - (1) Owners cease the activity constituting the violation promptly upon receipt of Holder's notice;
 - (2) Owners and Holder agree, within the initial thirty (30) day period, upon the measures Owners will take to cure the violation;
 - (3) Owners commence to cure within the initial thirty (30) day period; and
 - (4) Owners continue thereafter to use best efforts and due diligence to complete the agreed upon cure.
- (c) **Imminent Harm.** No notice or cure period is required if circumstances require prompt action to prevent or mitigate irreparable harm or alteration to any natural resource or other feature of the Property described in the Conservation Objectives.

~~7.037.02~~ **Remedies**

Upon expiration of the cure period (if any) described in the preceding section, Holder may do any one or more of the following:

- (a) **Injunctive Relief.** Seek injunctive relief to specifically enforce the terms of this Grant; to restrain present or future violations of the terms of this Grant; and/or to compel restoration of resources destroyed or altered as a result of the violation.

- (b) **Civil Action.** Recover from Owners or other Persons responsible for the violation all sums owing to Holder under applicable provisions of this Grant together with interest thereon from the date due at the Default Rate. These monetary obligations include, among others, Losses and Litigation Expenses.
- (c) **Self-Help.** Enter the Property to prevent or mitigate further damage to or alteration of natural resources of the Property identified in the Conservation Objectives.

7.047.03 Modification or Termination

If the Conservation Easement is or is about to be modified or terminated by exercise of the power of eminent domain (condemnation) or adjudication of a court of competent jurisdiction sought by a Person other than Holder the following provisions apply:

- (a) **Compensatory Damages.** Holder is entitled to collect from the Person seeking the modification or termination, compensatory damages in an amount equal to the increase in Market Value of the Property resulting from the modification or termination plus reimbursement of Litigation Expenses as if a violation had occurred. In the event of an extinguishment of the Conservation Easement, Holder is entitled to the greater of the compensation provided under this section or the compensation provided under any other provision of this Grant.
- (b) **Restitution.** Holder is entitled to recover from the Person seeking the modification or termination: (1) restitution of amounts paid for this Grant (if any) and any other sums invested in the Property for the benefit of the public as a result of rights vested by this Grant, plus (2) reimbursement of Litigation Expenses as if a violation had occurred.

Comment [AL44]: This sentence ensures the most positive conservation outcome, no matter the operation of the Code or other provisions in the Grant.

7.057.04 Remedies Cumulative

The description of Holder’s remedies in this Article does not preclude Holder from exercising any other right or remedy that may at any time be available to Holder under this Article or Applicable Law. If Holder chooses to exercise one remedy, Holder may nevertheless choose to exercise any one or more of the other rights or remedies available to Holder at the same time or at any other time.

7.067.05 No-Waivers

- (a) **No Waiver.** If Holder does not exercise any right or remedy when it is available to Holder, that is not to be interpreted as a waiver of any non-compliance with the terms of this Grant or a waiver of Holder’s rights to exercise its rights or remedies at another time.
- (b) **No Material Effect.** Holder in its discretion may provide a Waiver if Holder determines that the accommodation is for a limited time and limited purpose and will have no material effect on the Conservation Objectives.

Comment [AL45]: This new subsection clarifies the limitations on Holder’s discretion.

7.077.06 No Fault of Owners

Holder will waive its right to reimbursement under this Article as to Owners (but not other Persons who may be responsible for the violation) if Holder is reasonably satisfied that the violation was not the fault of Owners and could not have been anticipated or prevented by Owners by reasonable means.

7.087.07 Multiple Owners

- (a) **Multiple Lots.** If different Owners own Lots within the Property, only ~~the~~ Owners of the Lot in violation will be held responsible for the violation.
- (b) **Multiple Owners; Single Lot.** If more than one Owner owns the Lot in violation of the terms of this Grant, the Owners of the Lot in violation are jointly and severally liable for the violation regardless of the form of ownership.

Comment [AL46]: This new section consolidates the two sections pertaining to multiple owners into two subsections under a single section heading.

Article 8. Miscellaneous

8.01 Notices

- (a) **Requirements.** Each Person giving any notice pursuant to this Grant must give the notice in writing and must use one of the following methods of delivery: (1) personal delivery; (2) certified mail, return receipt requested and postage prepaid; or (3) nationally recognized overnight courier, with all fees prepaid.

(b) **Address for Notices.** Each Person giving a notice must address the notice to the appropriate Person at the receiving party at the address listed below or to another address designated by that Person by notice to the other Person:

If to Owners:

If to Holder:

8.02 Governing Law

The laws of the Commonwealth of Pennsylvania govern this Grant.

8.03 Transfer

- (a) **Notice Required.** Not less than thirty (30) days prior to transfer of the Property or any Lot, Owners must notify Holder of the name(s) and address for notices of the Persons who will become Owners following the transfer.
- (b) **Prior to Transfer.** Owners authorize Holder to (1) contact the Persons to whom the Property or Lot will be transferred, and other Persons representing Owners or the prospective transferees, to discuss with them this Grant and, if applicable, other pertinent documents; and (2) enter the Property to assess compliance with this Grant.
- (c) **Ending Continuing Liability.** If Holder is not notified per this section's requirement, it is not the obligation of Holder to determine whether a violation first occurred before or after the date of the transfer. The pre-transfer Owners continue to be liable on a joint and several basis with the post-transfer Owners for the correction of violations under this Grant until such time as Holder is given the opportunity to inspect and all violations noted in Holder's resulting inspection report are cured. ~~Owners prior to transfer are liable, on a joint and several basis with the Owners following the transfer, for the correction of violations and discharge of other obligations of Owners under this Grant. This provision continues to apply until Holder has been notified of the transfer, inspects the Property, and reports no violations observed during such inspection.~~

Comment [AL47]: This section's content was moved from 2.01, unchanged except as shown in the markup.

Comment [AL48]: This change explains why the Owners should share liability.

8.04 Assignment and Transfer

~~Neither Owners nor Holder may assign or otherwise transfer any of their respective rights or duties under this Grant voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law or any other manner except as permitted below. Any purported assignment or transfer in violation of this section is void.~~

(a) ~~By Holder~~

~~Holder may assign its rights and duties under this Grant, either in whole or in part, but only to a Qualified Organization that executes and records in the Public Records a written agreement assuming the obligations of Holder under this Grant. The assigning Holder must deliver the Baseline Documentation to the assignee Holder as of the date of the assignment. Holder must assign its rights and duties under this Grant to another Qualified Organization if Holder becomes the Owner of the Property.~~

Comment [AL49]: This Holder covenant is consolidated with other Holder covenants at 6.01(b).

Comment [AL50]: This administrative provision is now addressed at 8.05(b).

8.05 ~~8.04~~ Burdens; Benefits; Exclusive to Holder

This Grant binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.

- (a) ~~By Owners~~ **Binding on All Owners.** This Grant vests a servitude running with the land binding upon the undersigned Owner or Owners and, upon recordation in the Public Records, all subsequent Owners of the Property or any portion of the Property are bound by its terms whether or not ~~the~~ Owners had actual notice of this Grant and whether or not the deed of transfer specifically referred to the transfer being under and subject to this Grant.
- (b) **Rights Exclusive to Holder.** Except for rights of Beneficiaries (if any) under ~~Article V of this Grant~~, only Holder has the right to enforce the terms of this Grant and exercise other rights of Review, Waiver, Amendment or other discretionary rights of Holder. ~~Owners of Lots within the Property do not have the right to enforce the terms of this Grant against Owners of other Lots within the Property. Only the~~

Comment [AL51]: This provision was originally contained in the first sentence of the former 7.04.

Comment [AL52]: Unnecessary and distracting elaboration.

Owners of the Lot that is the subject of a request for Review, Waiver, Amendment, interpretation or other decision by Holder have any right to notice of, or other participation in, such decision. ~~Subject to the restrictions on assignment and transfer set forth in the preceding section, this Grant binds and benefits Owners and Holder and their respective personal representatives, successors and assigns.~~

Comment [AL53]: Content moved to the opening sentence of 8.04.

8.05 Documentation Requirements

- (e)(a) **Between Holder and Owners.** No Amendment, Waiver, approval after Review, interpretation or other decision by Holder is valid or effective unless it is in writing and signed by an authorized signatory for Holder. This requirement may not be changed by oral agreement. The grant of an Amendment or Waiver in any instance or with respect to any Lot does not imply that an Amendment or Waiver will be granted in any other instance. If otherwise permitted under this Grant, an Amendment becomes effective upon recordation in the Public Records of Writing.
- (b) **Between Holder and Assignee.** Any assignment of Holder's rights under this Grant, if otherwise permitted under this Grant, must be in a writing signed by both the assigning Holder and the assignee Holder. The assignment document must include a covenant by which the assignee Holder assumes the covenants and other obligations of Holder under the Grant. The assigning Holder must deliver the Baseline Documentation and such other documentation in Holder's possession and reasonably needed to uphold the Conservation Objectives. The assignment becomes effective upon recordation in the Public Records or, if applicable, entry of an order by a court of competent jurisdiction.

Comment [AL54]: The Public Records requirement was previously built into the definition of Amendment.

Comment [AL55]: This provision contains essentially the same content as the former 7.03(a) but provides also that Holder must provide the assignee other documentation needed to uphold the Conservation Objectives and clarifies that a court order can effect the effectiveness of an assignment.

8.06 Severability

If any provision of this Grant is determined to be invalid, illegal or unenforceable, the remaining provisions of this Grant remain valid, binding and enforceable. To the extent permitted by Applicable Law, the parties waive application of any provision of Applicable Law that renders any provision of this Grant invalid, illegal or unenforceable in any respect.

8.07 Counterparts

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

8.08 Indemnity

Owners must indemnify and defend the Indemnified Parties against all Losses and Litigation Expenses arising out of or relating to: (a) any breach or violation of this Grant or Applicable Law; and (b) ~~damage to property or~~ personal injury (including death) and damage to personal belongings occurring on or about the Property if and to the extent not caused by the negligent or wrongful acts or omissions of an Indemnified Party.

Comment [AL56]: "Personal belongings" replaces "property" so that if users universally change "Property" to "Conservation Area," they don't accidentally change the meaning of this provision.

8.09 Guides to Interpretation

- (a) **Captions.** Except for the identification of defined terms in the Glossary, the descriptive headings of the articles, sections and subsections of this Grant are for convenience only and do not constitute a part of this Grant.
- (b) **Glossary.** If any term defined in the Glossary is not used in this Grant, the defined term is to be disregarded as surplus material.
- (c) **Other Terms**
- (1) The word "including" means "including but not limited to."
 - (2) The word "must" is obligatory; the word "may" is permissive and does not imply any obligation.
- (d) **Conservation and Preservation Easements Act.** This Grant is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation easement under the Conservation and Preservation Easements Act.
- (e) **Restatement (Third) of the Law of Property: Servitudes.** This Grant is intended to be interpreted so as to convey to Holder all of the rights and privileges of a holder of a conservation servitude under the Restatement (Third) of the Law of Property: Servitudes.

Comment [AL57]: The change provides the full title of the act. The abbreviated name didn't reduce the length of the document.

8.10 Entire Agreement

This is the entire agreement of Owners, Holder and Beneficiaries (if any) pertaining to the subject matter of this Grant. The terms of this Grant supersede in full all statements and writings between Owners, Holder and others pertaining to the transaction set forth in this Grant.

8.11 Incorporation by Reference

Each exhibit attached to this Grant is incorporated into this Grant by this reference. The Baseline Documentation (whether or not attached to this Grant) is incorporated into this Grant by this reference.

8.12 Coal Rights Notice

The following notice is given to Owners solely for the purpose of compliance with the Conservation and Preservation Easements Act:

NOTICE: The Conservation Easement may impair the development of coal interests including workable coal seams or coal interests which have been severed from the Property.

8.13 Jurisdiction; Venue

Holder and Owners submit to the exclusive jurisdiction of the courts of the Commonwealth of Pennsylvania located in the county in which the Property is located and agree that any legal action or proceeding relating to this Grant or the Conservation Easement may only be brought in those courts located in that county.

Article 9. Glossary

“Access Drive(s)” means a roads, drives or lanes providing vehicular access and located within the Property.

“Additional Improvements” means all buildings, structures, facilities and other improvements within the Property, whether temporary or permanent, other than an Existing Improvements.

“Agricultural Improvements” means an improvements-Improvement used or usable in furtherance of Agricultural uses such as barn, stable, silo, spring house, green house, hoop house, riding arena (whether indoor or outdoor), horse walker, manure storage pit, storage buildings, feeding and irrigation facilities.

“Agricultural or Agriculture” means any one or more of the following and the leasing of land for any of these purposes:

(a) Farming

- (1) Production of vegetables, fruits, seeds, mushrooms, nuts and nursery crops (including trees) for sale.
- (2) Production of poultry, livestock and their products for sale.
- (3) Production of field crops, hay or pasture.
- (4) Production of sod to be removed and planted elsewhere. **(b) Equestrian**
- (5) Boarding, stabling, raising, feeding, grazing, exercising, riding and training horses and instructing riders.

“Amendment” means an amendment, modification or supplement to this Grant signed by Owners and Holder and recorded in the Public Records. The term “Amendment” includes an amendment and restatement of the Grant.

“Applicable Law” means any federal, state or local laws, statutes, codes, ordinances, standards and regulations applicable to the Property, the Conservation Easement or this Grant as amended through the applicable date of reference. If this Grant is intended to meet the requirements of a qualified conservation contribution, then applicable provisions of the Code and the Regulations are also included in the defined term.

“Beneficiary” means a Person given rights under the terms of this Grant (other than Owners or Holder) and who is permitted to be a Beneficiary under Applicable Law.

“Best Management Practices” mean a series of guidelines or minimum standards (sometimes referred to as BMP’s) recommended by federal, state and/or county resource management agencies for proper application

Comment [AL58]: This new provision was created at the request of a Holder’s counsel in response to a PA court case where the Holder had to deal with a less favorable court not located in the Property’s county. Some Holders will prefer the courts in the county of their main office or the potential to use the federal courts. The commentary will provide alternative language to accomplish this.

Comment [AL59]: Section headings have been removed from the glossary to improve readability and reduce the document’s length. Alphabetization by term is sufficient to enable users to easily locate definitions.

Comment [AL60]: Leasing is addressed in Article 2.

Comment [AL61]: 8.05(a) now specifies that an Amendment isn’t effective until recorded in the Public Records.

Comment [AL62]: This addition simply provides clarification.

Comment [AL63]: The definition was embedded in the former 1.07.

of farming and forestry operations, non-point pollution of water resources and other disturbances of soil, water and vegetative resources and to protect wildlife habitats. Examples of ~~resource management~~ agencies issuing pertinent BMP's as of the Easement Date are: the Natural Resource Conservation Service of the ~~United States~~ U.S. Department of Agriculture (with respect to soil resources); ~~and~~ the Pennsylvania Department of Environmental Protection (with respect to soil erosion, sedimentation and water resources). ~~Examples of organizations issuing standards promoted by agencies for woodland management include: the Forest Stewardship Council, the Sustainable Forestry Initiative, the Penn State College of Agricultural Sciences and the American Tree Farm System; and the following sources of BMP's with respect to forest and woodland management: the Forest Stewardship Council principles and criteria, Sustainable Forestry Initiative standards, Forest Stewardship Plan requirements, American Tree Farm standards and Best Management Practices for Pennsylvania Forests.~~

“Code” means the Internal Revenue Code of 1986, as amended through the applicable date of reference.

“~~Conservation and Preservation Easements Act~~” means the ~~Pennsylvania Conservation and Preservation Easements Act, the Pennsylvania~~ act of June 22, 2001 (P.L. 390, No. 29) (32 P.S. §§5051-5059) as amended through the applicable date of reference.

“Construction” means any demolition, construction, reconstruction, ~~maintenance~~, expansion, exterior alteration, installation or erection of temporary or permanent Improvements; and, whether or not in connection with any of the foregoing, any excavation, dredging, mining, filling or removal of gravel, soil, rock, sand, coal, petroleum or other minerals.

“Default Rate” means an annual rate of interest equal at all times to two percent (2%) above the “prime rate” announced from time to time in *The Wall Street Journal*.

“Dwelling Unit” means the use or intended use of an Improvement or portion of an Improvement for human habitation by one or more Persons (whether or not related). Existence of a separate kitchen accompanied by sleeping quarters is considered to constitute a separate Dwelling Unit.

“~~Existing Agreements~~ ~~Servitude~~” means ~~an easements and/or other matter affecting title to the Property (other than a Liens) accorded priority to the Conservation Easement by notice in the Public Records; other servitudes affecting the Property prior to the Easement Date that constitute legally binding servitudes prior in right to the Conservation Easement;~~

“Existing Improvements” means ~~all~~ a buildings, structures, facilities ~~ies~~ and/or other improvements, whether temporary or permanent, located on, above or under the Property as of the Easement Date as identified in the Baseline Documentation.

~~“Extraction Improvements” mean wells, easements, impoundments and other Improvements for the exploration, extraction, collection, containment, transport and removal (but not processing or refining) of oil or natural gas (regardless of source) from substrata beneath the surface of the Property. The term “Extraction Improvements” includes any Access Drive required for the Construction or operation of Extraction Improvements or the removal of oil or natural gas from the Property. Extraction Improvements (whether or not providing sources of power for the Property) are not included in the defined terms “Utility Improvements” and “Site Improvements”;~~

“Forestry” means planting, growing, nurturing, managing and harvesting trees whether for timber and other useful products or for water quality, wildlife habitat and other Conservation Objectives.

“Height” means the vertical elevation of an Improvement measured from the average exterior ground elevation of the Improvement to a point, if the Improvement is roofed, midway between the highest and lowest points of the roof excluding chimneys, cupolas, ventilation shafts, weathervanes and similar protrusions or, if the Improvement is unroofed, the top of the Improvement.

“Impervious Coverage” means ~~the aggregate area of all~~ surfaces that are not capable of supporting vegetation within the applicable area of reference. Included in Impervious Coverage are the footprints (including roofs, decks, stairs and other extensions) of Improvements; paved or artificially covered surfaces such as crushed stone, gravel, concrete and asphalt; impounded water (such as a man-made pond); and compacted earth (such as an unpaved roadbed). Excluded from Impervious Coverage are running or non-impounded standing water (such as a naturally occurring lake); bedrock and naturally occurring stone and

Comment [AL64]: The new definition more clearly describes the type of matter that could trump the Conservation Easement under the law.

Comment [AL65]: A modest change in the wording of permitted activities in the HPA eliminated the only reference to “Extraction Improvements” in the text. The definition, which still might prove useful in some circumstances, can now be found in the commentary.

gravel; and earth (whether covered with vegetation or not) so long as it has not been compacted by non-naturally occurring forces.

“**Improvement**” means any Existing Improvement or Additional Improvement.

“**Indemnified Parties**” mean Holder, each Beneficiary (if any) and their respective members, directors, officers, employees and agents and the heirs, personal representatives, successors and assigns of each of them.

“**Invasive Species**” means a plant species that is (a) non-native (or alien) to the ecosystem under consideration; and (b) whose introduction causes or is likely to cause economic or environmental harm or harm to human health. In cases of uncertainty, publications such as “Plant Invaders of the Mid-Atlantic Natural Areas”, published by the National Park Service National Capital Region, Center for Urban Ecology and the U.S. Fish and Wildlife Service, Chesapeake Bay Field Office are to be used to identify Invasive Species.

“**Lien**” means any mortgage, lien or other encumbrance securing the payment of money.

“**Litigation Expense**” means any court filing fee, court cost, arbitration fee or cost, witness fee and each other fee and cost of investigating and defending or asserting any claim of violation or for indemnification under this Grant including in each case, attorneys’ fees, other professionals’ fees and disbursements.

“**Losses**” mean any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, damages (including punitive damages), diminution in value, fines, fees and penalties or other charge other than a Litigation Expense.

“**Lot**” means a unit, lot or parcel of real property estate separated or transferable for separate ownership or lease under Applicable Law.

“**Market Value**” means the fair value that a willing buyer, under no compulsion to buy, would pay to a willing seller, under no compulsion to sell as established by appraisal in accordance with the then-current edition of Uniform Standards of Professional Appraisal Practice issued by the Appraisal Foundation or, if applicable, a qualified appraisal in conformity with §1.170A-13 of the Regulations.

“**Native Species**” mean a plant or animal indigenous to the locality under consideration. In cases of uncertainty, published atlases, particularly *The Vascular Flora of Pennsylvania: Annotated Checklist and Atlas* by Rhoads and Klein and *Atlas of United States Trees, vols. 1 & 4* by Little are to be used to establish whether or not a species is native.

“**Owners**” mean the undersigned Owner or Owners and all Persons after them who hold an interest in the Property.

“**Person**” means an individual, organization, trust, government or other entity.

“**Public Records**” mean the public records of the office for the recording of deeds in and for the county in which the Property is located.

“**Qualified Organization**” means a governmental or non-profit entity that (a) has a perpetual existence; (b) is established as a public charity for the purpose of preserving and conserving natural resources, natural habitats, environmentally sensitive areas and other charitable, scientific and educational purposes; (c) meets the criteria of a qualified organization under the Regulations; and (d) is duly authorized to acquire and hold conservation easements under Applicable Law.

“**Regulations**” mean the provisions of C.F.R. §1.170A-14, and any other regulations promulgated under the Code that pertain to qualified conservation contributions, as amended through the applicable date of reference.

“**Regulatory Signs**” mean signs (not exceeding one square foot each) to control access to the Property or for informational, directional or interpretive purposes.

“**Renewable Energy**” means energy that can be used without depleting its source such as solar, wind, geothermal and movement of water (hydroelectric and tidal).

Comment [AL66]: “Estate” replaces “property” so that if users universally change “Property” to “Conservation Area,” they don’t accidentally change the meaning of this provision.

“**Residential Improvements**” mean Dwellings and Improvements accessory to residential uses such as garage, swimming pool, pool house, tennis court and children’s play facilities.

“**Resource Management Plan**” means a record of the decisions and intentions of Owners prepared by a qualified resource management professional for the purpose of protecting natural resources described in the Conservation Objectives during certain operations potentially affecting natural resources protected by this Grant. The Resource Management Plan (sometimes referred to as the “RMP”) includes a resource assessment, identifies appropriate performance standards (based upon Best Management Practices where available and appropriate) and projects a multi-year description of planned activities for identified operations to be conducted in accordance with the plan.

“**Review**” means review and approval of Holder under the procedure described in Article VI.

“**Review Requirements**” mean collectively, any plans, specifications or information required for approval of the Subdivision, activity, use or Construction under Applicable Law (if any) plus (a) the information required under the Review Requirements incorporated into this Grant either as an exhibit or as part of the Baseline Documentation or (b) if the information described in clause (a) is inapplicable, unavailable or insufficient under the circumstances, the guidelines for Review of submissions established by Holder as of the applicable date of reference.

“**Site Improvements**” means an unenclosed Improvements such as an Access Drives, Utility Improvements, walkways, boardwalks, retention/detention basins ~~and-or~~ other storm-water management facilities, wells, septic systems, bridges, parking areas ~~and-or~~ other pavements, lighting fixtures, signs, fences, walls, gates, man-made ponds, berms and landscaping treatments.

“**Soil Conservation Plan**” means a plan for soil conservation and/or sedimentation and erosion control that meets the requirements of Applicable Law.

“**Steep Slope Areas**” mean areas greater than one acre having a slope greater than 15%.

“**Subdivision**” means any division of the Property or any Lot within the Property; and any creation of a unit, lot or parcel of real ~~property~~estate, including subsurface portions of the Property, for separate use or ownership by any means including by lease or by implementing the condominium form of ownership. The term “Subdivision” includes any “subdivision” as defined in the Pennsylvania Municipalities Planning Code, Act of 1968, P.L. 805, No. 247, as reenacted and amended as of the applicable date of reference.

“**Sustainable**” means land management practices that provide goods and services from an ecosystem without ~~degradation of biodiversity and resource values at the site~~degrading soil or water resources and without a decline in the yield of those goods and services over time|.....

Comment [AL67]: See the commentary for references to discussions on the concept of sustainability.

“**Utility Improvement**” means ~~improvements~~an Improvement for the reception, storage or transmission of potable water, stormwater, sewage, electricity, gas and telecommunications or other sources of power.

“**Waiver**” means a written commitment by which Holder, without any obligation to do so, agrees to refrain from exercising one or more of its rights and remedies for a specific period of time with respect to a specific set of circumstances~~-if Holder is satisfied that the accommodation will have no material effect on Conservation Objectives~~|.....

Comment [AL68]: The deleted material is now placed in a newly created subsection at 7.05(b).

“**Wet Areas**” mean watercourses, springs, wetlands and non-impounded standing water and areas within 100 -feet of their edge.

“**Woodland Areas**” mean areas~~(s)~~ within the Property described as “wooded” or “forested” in the Baseline Documentation or identified as such on the Conservation Plan, or if not wooded or forested as of the Easement Date, are designated as successional woodland areas on the Conservation Plan.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

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:

This document is based on the Model Grant of Conservation Easement, 7th edition (DRAFT of 5/27/2016), provided by the Pennsylvania Land Trust Association.

The model on which this document is based should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. It should be revised under the guidance of legal counsel to reflect the specific situation.

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: