

Model

# Access Easement for Environmental Stewardship with Commentary

2<sup>nd</sup> Edition

Produced by the  
Pennsylvania Land Trust Association

with support from the

Colcom Foundation

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Community Conservation Partnerships Program

Environmental Stewardship Fund

under the administration of the

Pennsylvania Department of Conservation and Natural Resources

Bureau of Recreation and Conservation

and other generous contributors

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## Preface

The *Model Access Easement for Environmental Stewardship* provides users with a state-of-the-art legal document and guidance to customize it to the situation. The model's commentary explains the reasoning behind every provision, instructs on applying the model to particular circumstances, and provides alternative and optional provisions to address a variety of variables.

The first edition (2005) of the model was developed solely for the purpose of securing long-term access to property for the purpose of remediating the effects of abandoned mine drainage (AMD). The second edition maintains this purpose, retaining AMD treatment as the project type addressed in the model. However, the model's provisions have been modified to facilitate customizations of the model for other types of environmental stewardship projects. The model also has been updated to reflect changes in state law and received a variety of miscellaneous improvements.

### Use the Newest Version

The Pennsylvania Land Trust Association posts its models at [ConservationTools.org](http://ConservationTools.org) and updates them to address changes in the law and new understandings in the field. Check the website for the most up-to-date material.



### Improve the Guidance

The Pennsylvania Land Trust Association welcomes suggestions for improving its guidance. Please email your comments to [info@conserveland.org](mailto:info@conserveland.org).

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

## Acknowledgements

**Patricia L. Pregmon, Esq.**, and **Andrew M. Loza** are the authors.

The first edition was prepared by the Pennsylvania Land Trust Association in cooperation with the Eastern Pennsylvania Coalition for Abandoned Mine Reclamation, Enterprising Environmental Solutions, Inc., PA Department of Conservation and Natural Resources, PA Department of Environmental Protection, Schuylkill Conservation District, Schuylkill Headwaters Association, and Stell Environmental Enterprises, Inc.

The Pennsylvania Land Trust Association produced this new edition with financial assistance from the Colcom Foundation; the William Penn Foundation; and the Community Conservation Partnerships Program, Environmental Stewardship Fund, under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.



# CONTENTS

Preface..... i  
 Acknowledgments ..... i

## Model

### Commentary

General Instructions.....	1	3.01 No Interference.....	6
Preliminary Matters.....	1	3.02 Construction.....	6
Recording.....	1	3.03 Indemnity.....	7
Title of Document.....	2	Article 4. Miscellaneous.....	7
Opening Recital.....	2	4.01 Notices.....	7
Easement Date.....	2	4.02 Governing Law.....	7
The Undersigned Owners.....	2	4.03 Assignment by the Holder.....	7
The Holder.....	2	4.04 Severability.....	7
Article 1. Background.....	3	4.05 Amendments; Waivers.....	7
1.01 Property.....	3	4.06 Counterparts.....	8
1.02 Purpose.....	3	4.07 Guides to Interpretation.....	8
1.03 Easement Plan.....	3	4.08 Entire Agreement.....	8
1.04 Title.....	4	4.09 Incorporation by Reference.....	8
1.05 Consideration.....	4	4.10 Binding Agreement.....	8
Article 2. Grant of Easements.....	4	Closing Matters.....	8
2.01 Grant.....	4	Style Guide.....	9
2.02 Term.....	5	Style Guide to the Model.....	9
2.03 Entry.....	5	Style Guide to the Commentary.....	9
2.04 Beneficiaries.....	5		
Article 3. Obligations.....	6		

### Supplemental Provisions

Highlight Immunity Provided by the Environmental Good Samaritan Act.....	1	Appendix: Good Samaritan Act Immunities.....	4
Provide for Access Fee.....	2		
Grant Access Easement in Conjunction with a Conservation Easement.....	2		
Add Beneficiaries.....	2		
Itemize Owners’ Rights.....	3		
Provide for Termination and Release if Project Doesn’t Proceed.....	4		

**Prepared by:**

Name:

Address:

Telephone:

**Return to:**

Name:

Address:

**Tax parcel(s):**

<p><b>Model Grant of Access Easement for Environmental Stewardship</b></p> <p>version 2019.02.19 for <b>Abandoned Mine Drainage Remediation Projects</b></p> <p>Published by the Pennsylvania Land Trust Association and available at <a href="http://ConservationTools.org">ConservationTools.org</a>.</p>
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**GRANT OF ACCESS EASEMENT  
FOR ENVIRONMENTAL STEWARDSHIP**

THIS GRANT OF ACCESS EASEMENT FOR ENVIRONMENTAL STEWARDSHIP (“this grant”) dated \_\_\_\_\_ is made by \_\_\_\_\_ (the “undersigned Owners”) in favor of \_\_\_\_\_ (the “Holder”).

**Article 1. Background**

**1.01 Property**

The undersigned 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:

Parcel identifier:

County:

State: Pennsylvania

**1.02 Purpose**

The undersigned Owners desire Holder to undertake a project (the “Project”) to improve the quality of water passing through or discharging from the Property and provide related public benefits. The Project, including any plantings, structures, and equipment (collectively, the “Installation”) to be installed, is more fully described in exhibit B.

**1.03 Easement Plan**

Exhibit C provides a survey or other graphic depiction of the Property (the “Easement Plan”) showing the location (“the Project Area”) within which Holder intends to undertake the Project. The Easement Plan may also show the location of any of the following areas referred to in this grant: the “Staging Area,” which is to serve as a staging area for construction; the “Access Corridor,” which is to provide access to the Project Area from the public right of way; and the “Utility Corridor,” which is to provide electricity or other utilities for the Project.

**1.04 Title**

The undersigned Owners represent and warrant to Holder that they are the sole owners in fee simple of the Property.

**1.05 Consideration**

The undersigned Owners acknowledge receipt of \$1.00 in consideration of this grant.

## Article 2. Grant of Easements

### 2.01 Grant

- (a) **Project Area.** The undersigned Owners grant to Holder an easement over the Project Area to install, construct, and replace the Installation (those activities collectively, “Construction”); operate and maintain the Installation; monitor water quality; and other activities in furtherance of the Project’s purpose. These easement rights may be exercised at any time and from time to time by Holder.

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#### Add the following additional grants as appropriate to the Project:

- (b) **Staging Area.** The undersigned Owners grant to Holder an easement over the Staging Area to park vehicles, store materials and equipment, and conduct other activities related to Construction. Upon termination of use of the Staging Area for Construction, Holder must restore the Staging Area as nearly as possible to its condition prior to entry.
- (c) **Access Corridor.** The undersigned Owners grant to Holder an easement to provide within the Access Corridor pedestrian and (if reasonably necessary for Project activities) vehicular access between the Project Area and the public right-of-way. If no Access Corridor is designated on the Easement Plan, then the easement will be over a path identified by Holder for which the Owners have no reasonable objection.
- (d) **Utility Corridor.** The undersigned Owners grant to Holder an easement over the Utility Corridor to provide electricity or other utilities reasonably required in connection with the Project.
- (e) **Education.** The undersigned Owners grant Holder the right to invite other Persons, accompanied by an authorized representative of Holder, to view and study the Project Area and Installation for scientific and educational purposes related to the Project. Holder is permitted to install signage identifying and explaining the Project and the interest of Holder and Beneficiaries with respect to the Project within the Project Area (and Access Corridor, if any).
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### 2.02 Term

The term of the easements granted in this article is perpetual, provided, however, that Holder may terminate Holder’s rights to enter the Property under this grant at any time following notice to Owners. Upon notice of termination, Owners and Holder must sign and record in the Public Records a release of this grant and, upon such recordation, neither Owners nor Holder have any further rights or obligations under this grant. Unless otherwise agreed in writing by Owners and Holder, Holder has no obligation to remove the Installation prior to or upon termination of this grant.

### 2.03 Entry

Except for notice prior to Construction as required in the next article, no notice to Owners is required prior to entry onto the Property pursuant to the rights granted under this article.

### 2.04 Beneficiaries

Should Holder fail to complete or maintain the Project, the rights of Holder under this grant may be exercised by Holder, any of the Persons identified below (collectively, the “Beneficiaries”), and the respective employees, agents, contractors, successors, and assigns of each of them.

- [none]

## Article 3. Obligations

### 3.01 No Interference

Owners must not interfere or allow any tenant or other person to interfere in any way with the Project or with the exercise of Holder’s rights with respect to the easements granted under article 2.

- (a) **Activities Consistent with Easement.** Except as limited under this section, Owners have all the rights recognized under applicable law to use the Property for purposes consistent with and not interfering with the easement rights granted to Holder.

- (b) **Activities Requiring Holder Approval.** Without limiting the breadth of the prohibition on interference under this section, listed below are activities prohibited to the Owners unless the prior written approval of Holder is first obtained:
- (1) Planting or removing vegetation within the Project Area.
  - (2) Construction of any kind within the Project Area, Access Corridor, Staging Area, or Utility Corridor, if any.
  - (3) Any activity on or about the Property that changes or redirects water resources within or flowing through the Project Area such as channelization of a stream or installation or expansion of a well or pond.

### 3.02 Construction

- (a) **Notice.** Holder must notify Owners not less than 30 days prior to commencement of Construction.
- (b) **Insurance.** Holder must obtain, if requested by Owners, certificates evidencing liability insurance coverage with respect to Holder and all Persons entering the Property for the purpose of Construction.
- (c) **Permits.** Holder must obtain, at Holder's cost and expense, all permits and approvals required for Construction.
- (d) **Costs.** Holder must promptly pay as and when due all costs and expenses incurred in connection with the Construction.
- (e) **Release of Liens.** Upon completion of Construction, Holder must obtain, if requested by Owners, release of mechanic's liens from Persons furnishing labor or materials in connection with Construction.

### 3.03 Indemnity

- (a) **Scope of Indemnity.** Holder must indemnify and defend the Owners against all Losses and Litigation Expenses arising out of or relating to:
- (1) Any breach or violation of this grant by Holder or other Person entering the Property at the request of Holder.
  - (2) Damage to property or personal injury (including death) occurring on or about the Property if and to the extent such damage results from the negligent or wrongful acts or omissions of Holder or other Person entering the Property under the grant of easements set forth in article 2.
- (b) **Loss; Litigation Expense**
- (1) The term "Loss" means any liability, loss, claim, settlement payment, cost and expense, interest, award, judgment, diminution in value, or damages other than a Litigation Expense.
  - (2) The term "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.

## Article 4. Miscellaneous

### 4.01 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:

**4.02 Governing Law**

The laws of the Commonwealth of Pennsylvania govern this grant.

**4.03 Assignment by Holder**

Holder may not assign its rights under this grant except to a nonprofit organization or governmental entity that assumes the liabilities and obligations of Holder under this grant. The rights of any Beneficiary of this grant are not assignable without the prior written consent of Holder.

**4.04 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 any provision of applicable law that renders any provision of this grant invalid, illegal, or unenforceable in any respect.

**4.05 Amendments; Waivers**

No amendment or waiver of any provision of this grant or consent to any departure by Owners from the terms of this grant is effective unless the amendment, waiver, or consent is in writing and signed by an authorized signatory for Holder. A waiver or consent is effective only in the specific instance and for the specific purpose given. An amendment must be recorded in the Public Records.

**4.06 Counterparts**

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

**4.07 Guides to Interpretation**

- (a) **Captions.** 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) **Other Terms.** The following terms, whenever used in this grant, are to be interpreted as follows:
  - (1) "Owners" means the undersigned Owners and all Persons after them who hold an interest in all or any part of the Property.
  - (2) "Person" means an individual, organization, trust, or other entity.
  - (3) "Public Records" means the public records of the office for the recording of deeds in and for the county in which the Easement Area is located.
  - (4) "Including" means "including, without limitation."
  - (5) "May" is permissive and implies no obligation; "must" is obligatory.

**4.08 Entire Agreement**

This grant is the entire agreement of Owners and Holder pertaining to the subject matter of this grant, superseding any other agreements, statements, or understandings, whether or not in writing.

**4.09 Incorporation by Reference**

Each exhibit referred to in this grant is incorporated into this grant by this reference.

**4.10 Binding Agreement**

This grant is a servitude running with the land binding upon the undersigned Owners, and, upon recordation in the Public Records, all subsequent Owners 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.

INTENDING TO BE LEGALLY BOUND, the undersigned Owners have signed and delivered this grant to Holder as of the date set forth above.

Witness/Attest:

\_\_\_\_\_

\_\_\_\_\_ (SEAL)

Owner's name:

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

The Holder joins in this grant to evidence its intention to be legally bound by its terms:

[NAME OF HOLDER]

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

This document is based on the  
**Model Grant of Access Easement for Environmental Stewardship**  
(version 2019.02.19 for Abandoned Mine Drainage Remediation Projects)  
provided by the Pennsylvania Land Trust Association  
and published at [ConservationTools.org](http://ConservationTools.org).

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:

# The Commentary

## General Instructions

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

**Guides and Models.** Unless otherwise noted, all guides and model legal documents referenced in the commentary are published by the Pennsylvania Land Trust Association and, thanks to the Association's donors, made available free of charge at [ConservationTools.org](https://www.conservatortools.org).

**Structure Tracks Model.** The main body of the commentary follows the same article and section structure as the model. Captions preceded by numbers or letters refer to articles or sections of the same title in the model.

**Supplemental Provisions.** The supplemental provisions following the main body of the commentary address content that: (1) if placed under a particular section of the commentary might be lost to the casual reader, (2) is too large and unwieldy to place in the main body, or (3) applies to multiple sections of the model.

**Style Guide.** Many of the style choices shaping the look and content of the model and commentary are described in the style guide that precedes the supplemental provisions.

**Start from a Model.** Each organization should feel free to create its own version of the model by incorporating additional or alternative provisions (from the commentary or otherwise) that reflect the policies

and preferences of that organization. That version or the then-current version of the model available at [ConservationTools.org](https://www.conservatortools.org) should be used as the starting point for each project. Avoid using a document prepared for another project as a starting point for a new easement. A model serves in part to remind users of the issues that need to be considered in the drafting process. The value of a model is lost, and errors and omissions become virtually guaranteed, when a document prepared for another property is used as a starting point for a new easement.

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

**Disclaimer Box.** Once a document based on the model has been prepared or reviewed by an attorney licensed to practice law in the applicable state, you may delete the box at the bottom of the model's signature page that begins "The model on which this document is based should not be construed or relied upon as legal advice..."

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

**Updates.** Check [ConservationTools.org](https://www.conservatortools.org) periodically for updates to the model.

## Preliminary Matters

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### Recording

**Recording Is Necessary.** Recording in the Public Records is necessary to make the easement binding upon future Owners who do not otherwise know, or have reason to know, of its terms. (For the Owners granting the easement, the easement is binding upon them (and the Holder) once the document is signed and unconditionally delivered.)

**Space for Recording Information.** The top of the model's first page provides space for information required by some county recording offices: the name

and address of the preparer, the person to whom the document is to be returned, and the tax parcels of the real estate to which the document pertains. If the information is unneeded or undesirable in a particular county, delete the text but keep the lines in order to preserve a 3-inch margin at the top of the first page.

**Margins.** Minimum margin requirements vary among counties; however, a typical requirement is a 3-inch margin at the top of the first page of any document presented for recording and 1-inch margins on the left, right, and bottom margins. (Page numbers may be less

than an inch from page bottom.) Many counties require that documents presented for recording must be printed on 8.5-inch by 11-inch paper. The model is formatted to conform to these specifications.

**Preparer Information.** Pennsylvania law does not require that a lawyer or law firm be identified as the preparer of the document. See the note “Get Legal Counsel” above. Do not identify a lawyer as the “preparer” if the lawyer did not, in fact, prepare the particular document or was not given the opportunity to review *all of the changes* made to the document. Lawyers and other professionals, such as architects and engineers, are legally and professionally responsible for the work they produce for clients.

**Date for Tax Purposes.** The date the grant was recorded in the Public Records establishes the year in which the donation (if any) of the easement was made for federal tax purposes.

## Title of Document

**The Paper Is Not the Property Interest.** You could shorten the document’s title to “Access Easement” to make for easier reading, but an easement is not a stack of paper; it is a real property interest. The granting document and the property interest conveyed by it are not the same thing but confusion can arise on the distinction when they share a name.

**Conveyance, Not Contract.** The title “Access Agreement” is an attractive, marketing-friendly label for the document, but it is imperfect in describing the nature of the document. The document is at its core an instrument that transfers a real property interest and sets forth the understandings of the parties about how they intend their relationship, as holders of interests in the same property, to work. The word “agreement” can connote a contract rather than a conveyance, thus causing confusion.

## Opening Recital

**Purpose.** The opening recital identifies the parties to the document and the effective date of the document.

## Easement Date

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

The date should not be earlier than the date of the earliest acknowledgment (notary signature) attached to document. In situations in which the document is being signed earlier than the desired effective date (for example, because it is being delivered into escrow pre-closing), replace “dated \_\_\_\_\_” with the phrase:

signed \_\_\_\_\_ but delivered \_\_\_\_\_.

The date of delivery is the effective date of the grant.

## The Undersigned Owners

**Identify Persons Granting the Easement.** Insert names exactly as set forth in the deed by which the Persons granting the easement acquired the Property. If there has been a change (for example, by death) in the ownership from the names on the deed into those Persons, it is good practice to recite the off-record facts to clear up the apparent gap in title. Recite these facts either in §1.01 or at the end of the legal description attached as exhibit A.

**All Owners Must Join.** All Owners as of the date of the grant must join in the agreement for the agreement to be effective under the law.

**Relationship of Owners.** The relationship of multiple Owners to each other may be added here but is not necessary for recording or other purposes. Examples:

X and Y, husband and wife  
and

X and Y, as joint tenants with rights of survivorship

**Not an Individual.** If a Person other than an individual is granting the easement, a phrase identifying the type of entity and state in which the Person was created is desirable but not necessary for recording or other purposes. Example:

X, a Pennsylvania limited partnership

**Rationale for Terms.** The model uses the term “Owners” rather than “Grantor” or “Grantors.” This choice avoids potential confusion about whether specific provisions were intended to apply only to the Persons signing the document or to subsequent owners of the Property as well. If a provision is intended to apply only to the Persons signing the agreement, the phrase “the undersigned Owners” is used. In all other cases, the term “Owners” (always plural) is used.

**“Grantors.”** If desired, you may substitute the term “Grantors” for “undersigned Owners.”

## The Holder

Insert the full legal name of the Holder (including Inc. or Incorporated if part of the legal name) here.

A phrase identifying the type of entity and state in which the Holder was created is desirable but not necessary for recording or other purposes. Example:

X, a Pennsylvania nonprofit corporation.

“Grantee” may be substituted for “the Holder” but is not recommended for several reasons. First, the term “the Holder” avoids any possible confusion in the future between the land trust or government unit that signed the document and a subsequent transferee who becomes the “the Holder” but was never the

“Grantee” of the original document. The second reason is that the terms Owners and the Holder are more distinctive and recognizable than Grantor and Grantee whose similarity in spelling can sometimes lead to confusion.

Other parties to the document may be added here, if desired; however, the model has been constructed to name additional “Beneficiaries” (if any) later in the document. It is not necessary for purposes of giving public notice of the content of the document to name additional Beneficiaries in the opening paragraph.

## Article I. Background

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**Purpose.** Article I informs the reader of:

- the factual information necessary to understand the subject matter of the document; and
- the intentions of the parties in entering into a legally binding relationship.

**Whereas Clauses.** Most of the content of article I could be restated in a series of “whereas clauses” conjoined with a series of “ands”; however, modern legal practice, which the model follows, is to state the facts supporting the intentions of the parties in a background section with the facts set out as simple declarative sentences.

### OPTION: ADD CONTENT TO ARTICLE I

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The supplemental provisions contain information and instructions for adding additional sections to this article or extensively reworking sections under the headings of:

- “Highlight Immunity Provided by the Environmental Good Samaritan Act”
- “Provide for Access Fee”
- “Grant Access Easement in Conjunction with Conservation Easement”

### 1.01 Property

**Purpose.** The section identifies the land that will be bound by the terms of the agreement.

**Property.** The legal description of the Property must be attached as exhibit A. It can be a photocopy of the legal description in the deed that vests title to the Property in the Owners that are granting the easement.

**Street Address.** Insert a street address if available; otherwise, try to identify by acreage and frontage along a certain road or roads. Example:

100 acres more or less on the north side of \_\_\_\_  
Road west of the intersection of \_\_\_\_ Road and \_\_\_\_  
Road.

**Municipality.** Insert the city, township, or borough in which the Property is located. This may or may not be the name of the “city” used for mailing address purposes.

**County.** Identification of the county is required for recording purposes. If the Property is located in more than one county, it is important to have multiple originals signed so as to permit recording to occur simultaneously in each county.

**Parcel Identifier.** The Tax Parcel Identification number for the Property is required for recording in most if not all counties. Some counties also require a Uniform Parcel Identification number. See Uniform Parcel Identifier Law (21 Pa. Stat. §§331-337). Some counties charge additional recording fees to note the tax parcel number or uniform parcel identifier number on the document presented for recording if not furnished in the document itself or the legal description attached as exhibit A.

### 1.02 Purpose

**Purpose.** This section sets forth the nature of the easement being granted. It incorporates into the document an exhibit that should be used to describe at length the project to be undertaken on the Property. The scope of the Holder’s rights to enter the Property are as expansive as the description of the “Project” contained in exhibit B.

**Installation.** The term “Installation” is intended to be expansive and include all buildings, structures, and other changes to the Property included in the Project.

**Content of Exhibit B.** Care should be taken to include not only a description of the structures and equipment to be constructed or installed but also site work such as grading or contouring. Also, be sure to include monitoring and other activities that may occur from time to time in the future. Include the purpose of any additional grants listed in 2.01 (such as education) that are related to the Project but not the Construction.

### 1.03 Easement Plan

**Purpose.** This section incorporates into the grant the plan depicting at least one, and up to four, areas that may be subject to easements under the document. The four areas are more fully described below. If the Easement Plan is larger than 8.5 by 11 inches, a reduced copy may be attached to the document; however, in that case, it is good practice to identify the Easement Plan specifically. For example:

A reduced copy of the Easement Plan prepared by \_\_\_\_ dated \_\_\_\_ is attached as exhibit C. Holder will keep a full-size copy of the Plan on file at the principal office of Holder.

- **Project Area.** The area that will always be shown on the Easement Plan is the Project Area within which the Project will be pursued over time.
- **Staging Area.** If a larger area is required during Construction activities for storage of equipment or materials or other staging purposes, the Easement Plan must designate the area to be occupied for that purpose as the Staging Area.
- **Access Corridor.** If access to the Project Area (or Staging Area) is not available directly from a public right-of-way, the Plan may designate the location of an Access Corridor within which the Holder may move personnel and equipment to and from the Treatment Area. For some projects, an Access Corridor may not be formally located on the Easement Plan. In that case, §2.01(c) provides for a location to be determined later.
- **Utility Corridor.** If the Project requires a source or power or other utility services to service the Project, the Easement Plan must also show the location of a Utility Corridor to be used for these purposes.

#### 1.04 Title

**Title Search.** Organizations should obtain title information to ensure that the supposed owners are truly the current owners of the Property. A title search will also determine what rights other Persons have to disturb the Project Area by exercise of rights under existing agreements. the Holder wants assurance that, for example, the Owners have not given a tenant farmer a lease that would prevent the Holder from constructing the Installation.

At a bare minimum, organizations should obtain a copy of the Owners' title policy and inquire whether the Owners have granted any easements or other servitudes during their period of ownership.

**Avoiding Default.** By granting an easement, the Owners could inadvertently default on an existing mortgage. This can be avoided by obtaining the consent of the mortgage holder to the easement in advance of the grant.

## Article 2. Grant of Easements

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**Purpose.** In this article, the Owners grant easements, and the nature and extent of the rights granted to the Holder are set forth.

### 2.01 Grant

**Grant and Convey.** The words "grant and convey" have a special meaning in real estate law. When an Owner grants and conveys, that automatically means that the Owner warrants that he or she owns the land

**Risk of Foreclosure.** Foreclosure of a mortgage or other lien prior in right to the access easement can extinguish the easement. Obtaining a non-disturbance agreement from the lien holder eliminates this risk.

**Working with Mortgage Company.** The website [ConservationTools.org](http://ConservationTools.org) offers [suggestions on how to approach mortgage lenders](#) and mortgage servicing companies to obtain their consent to an easement, a non-disturbance agreement, as well as subordination, although this latter item may be unnecessary for purposes of an access easement for environmental stewardship. The [Model Consent, Non-Disturbance, and Subordination Agreement with Commentary](#) is designed to address the issues identified in the guide.

If the Holder wants assurance that the Property is not encumbered by liens, the following text can be appended to section 1.04:

and that the Property is unencumbered by any mortgage or other lien securing the payment of money or, if it is, Owners have obtained and delivered to Holder consent and non-disturbance agreements from the lien holders in regards to this grant.

**Acceptance of Lien.** An organization could exercise its business judgment to accept an easement under and subject to an outstanding lien. Some of the factors influencing the decision to take that risk would be: the relative value of the lien to the value of the Property; the creditworthiness of the Owners; and the financial resources of the Holder if, in a worst-case scenario, the Holder had to purchase the outstanding lien so as to prevent extinguishment of the easement upon foreclosure.

### 1.05 Consideration

**Purpose.** This section sets forth the amount of consideration (if any) being paid for the easement. The model denotes nominal consideration by listing \$1.00 as the consideration. If the actual amount of consideration is more than \$1.00, change the amount accordingly. While not strictly necessary in Pennsylvania, nominal consideration is often inserted in legal documents to be sure an agreement to make a gift is legally binding.

(or interest in the land) being conveyed in fee simple and has a right to convey it. If the Owners wish to warrant this, then add “and convey” after each appearance of the verb “grant” in this section.

**Perpetual.** The model explicitly states the perpetual nature of the easement; strictly speaking, this is unnecessary in Pennsylvania because Pennsylvania law provides that an easement is perpetual unless otherwise provided in the easement document.

#### (a) Project Area

**Purpose.** In this subsection, the Owners grant to the Holder a permanent easement to enter the Property and exercise exclusive control over the Project Area to pursue the Project.

#### (b) Staging Area

**Purpose.** In this subsection, the Owners grant to the Holder the right to *temporarily* use another portion of the Property in support of Construction in the Project Area.

If a Staging Area is unnecessary, delete this subsection.

#### (c) Access Corridor

**Purpose.** In this subsection, the Owners grant to the Holder the necessary rights of ingress and egress to pursue the Project within the Project Area.

If the Project Area can be accessed directly from a public right-of-way, delete this subsection.

#### (d) Utility Corridor

**Purpose.** In this subsection, the Owners grant to the Holder the right to connect the Project Area to sources of power or other utility services within the public right-of-way.

If a Utility Corridor is unnecessary, delete this subsection.

**Assumes Connection to Public Utility.** This section contemplates that the utility facilities servicing the Treatment Area would be connected directly to power sources within the public right-of-way and charges would be billed directly to the Holder’s account by the provider of the utility service.

**If Using Owners’ Lines.** If the plan is to connect to (and thus use) the Owners’ lines, then append to the end of this subsection, the following:

and the right to hook up to and have electricity flow through the lines of the Owners.

**Addressing Costs.** If the Holder will not be billed directly by the utility, then either the grant could be expanded or a supplemental agreement could be made to provide for metering of power used by the Project and reimbursement to Owners for the reasonable cost of the power consumed by the Project.

#### (e) Education

In this subsection, Owners grant to the Holder rights to invite other Persons into the Project Area for scientific and educational purposes. The provision limits the extent of these scientific and educational visits by requiring the Holder’s invitees to be accompanied by an authorized representative of the Holder.

If the potential for scientific and educational visits is not desired, delete this subsection.

### 2.02 Term

**Purpose.** This section serves two purposes: First, it confirms that the easement over the Project Area continues for as long as the Holder desires, even to perpetuity. Second, it confirms that the Holder has no obligation to continue the Project in perpetuity and, if the Project is abandoned, the Installation stays in place unless the Owners and Holder have otherwise agreed.

#### OPTION: PROVIDE FOR SELECTIVELY TERMINATING RIGHTS

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If you want to permit the Holder to keep one or more granted easements—for example, the right to conduct science and education—while terminating other easements or particular rights under those easements, the section’s text could be replaced with the following:

The term of the easements granted in this article is perpetual provided however that Holder may terminate any one or more of Holder’s rights under this grant at any time following notice to Owners. Upon notice of termination, Owners and Holder must sign and record in the Public Records a release of the rights so terminated and, upon such recordation, neither Owners nor Holder have any further rights or obligations with respect to such terminated rights under this grant. Unless otherwise agreed in writing by Owners and Holder, Holder has no obligation to remove the Installation prior to or upon termination of this grant.

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### 2.03 Entry

**Purpose.** Absent limitations placed in the easement document, the Holder has a right of entry pursuant to the Holder’s rights under the grant of easement. This section highlights this right. It may be deleted without impacting the Holder’s right of entry, or it may be modified to place limitations on entry.

### 2.04 Beneficiaries

**Purpose.** The purpose of this section is to identify Persons who may exercise one or more of the rights granted to the Holder under the grant. The model’s default provision provides for no Beneficiaries.

**OPTION: ADD BENEFICIARIES**

If you want to give one or more Beneficiaries one or more rights regarding the easement, see “Add Beneficiaries” in the supplemental provisions.

## Article 3. Obligations

### 3.01 No Interference

**The Law.** Unless the easement document states otherwise, when an easement is granted, the Holder has the right to take any and all actions within the eased areas that fall within the scope and purpose of the easement. At the same time, the Owners retain all of the rights and benefits of their ownership of the Property to the extent they don’t interfere with the rights granted to the Holder.

**Purpose.** Consistent with what the law would allow if this section wasn’t in the document, this section sets the general rule that the Owners must limit use of the Property (whether by an Owner or other persons, such as a tenant farmer) to uses that are consistent with the rights of the Holder under the grant.

#### (a) Activities Consistent with Easement

**Purpose.** This provision provides the Owners with no more rights than they would have under the law absent this provision. The provision, however, does serve to highlight that the Owners still have rights to use the Property.

**OPTION: PROVIDE OWNERS MORE COMFORT**

Additional comfort and clarification may be given to the Owners by listing items of particular concern to the Owners as Owners’ rights. See “Itemize Owners’ Rights” in the supplemental provisions.

#### (b) Activities Requiring the Holder Approval

The list provided in the model is not intended to be exhaustive; it is only intended to set forth particular examples of possible activities that are likely to interfere with the Project. The model provides for exceptions to these prohibitions on a case-by-case basis by prior written approval of the Holder.

#### (1) Planting or removing vegetation within the Treatment Area.

The purpose of this limitation is to assure that planting and harvesting activities do not impair the success of the Project, which may be dependent upon maintenance of particular types of vegetation within the Project Area. The prohibition on removing vegetation may be clarified, if appropriate, to ensure that it is understood that the prohibition includes grazing.

#### (2) Construction of any kind within the Project Area, Access Corridor, Temporary Construction Area, or Utility Corridor, if any.

Construction within the Project Areas would ordinarily be inconsistent with the exercise of the Holder’s rights; however, the Owners and the Holder may agree on certain exceptions such as fencing with gated access within the Access Corridor or Utility Corridor to permit those areas to be used as pasture. If an exception has been agreed upon prior to the grant of easement, it can be added to this subsection; otherwise, the Holder can issue a written approval for the particular item.

#### (3) Any activity on or about the Property that changes or redirects water resources within or flowing through the Project Area such as channelization of a stream or installation or expansion of a well or pond.

The success of the Project may be dependent upon the quantity of water passing through the Project Area. Activities of the Owners on the remainder of the Property that would interfere with this goal must be prohibited.

### 3.02 Construction

**Purpose.** This section gives the Owners some protection from the risks of permitting Construction on the Property.

#### (a) Notice

**Time.** The number of days needed for notice can be shortened or lengthened.

#### (b) Insurance

**Purpose.** This provision assures the Owners that if persons entering the Property under the grant of easement are injured, insurance coverage will be available to pay those claims.

#### (c) Permits

**Purpose.** This provision assures the Owners that they will not be exposed to legal liability for violation of zoning, building, and safety laws. This provision also places responsibility on the Holder to obtain appropriate permitting from PADEP for the Project including any applicable stream encroachment, earth disturbance, or NPDES permits.

**(d) Costs**

**Purpose.** This provision assures the Owners that providers of labor and materials to the Project will be paid as and when due.

**(e) Release of Liens**

**Purpose.** This provision assures the Owners that they do not have to be concerned with potential liens associated with Construction interfering with their ability to obtain loans or sell their Property.

**3.03 Indemnity**

**Purpose.** This provision assures the Owners that the Holder will be responsible to provide defense of certain claims arising from the Project. The first category describes claims arising from the violation of the terms of the grant by the Holder or a Beneficiary, for example, claims arising from the failure of the Holder to obtain proper permits and approvals or the failure of the Holder to pay providers of labor and materials. The second category of indemnification arises from claims ordinarily covered by policies of commercial general liability insurance.

## Article 4. Miscellaneous

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**Purpose.** This article groups together a variety of provisions pertaining to the administration of the easement.

**4.01 Notices**

**Purpose.** This section provides a procedure for the giving of formal notices under the grant of easement.

**Safety.** This section provides a means for notice to the Holder of any defective or dangerous condition in the Project Area so that prompt action can be taken to protect public safety. the Holder may want to furnish in its telephone answering system an emergency means of contact on weekends and holidays by text message or phone call.

**Electronic Option.** Electronic mail can be added as well if the Holder is confident this means of communication will be duly noted. The customary practice is to require that notices by electronic means be followed promptly by notice delivered by one of the methods listed in the unmodified model.

**Street Address.** A street address should be furnished because commercial couriers (such as FedEx or UPS) cannot deliver to P.O. boxes.

**4.02 Governing Law**

**Purpose.** In case an Owner granting the easement or a future Owner is an out-of-state resident, this provision makes it clear that only the laws of the Commonwealth of Pennsylvania apply. This avoids a dispute about whether the laws of another jurisdiction apply.

**4.03 Assignment by the Holder**

This section sets forth the rules governing the transferability of rights and duties under the easement. Some Owners request prior notice and rights of approval as to the identity of the proposed transferee. Rights of prior notice may be given to Owners if the Holder desires to do so. That will give Owners the

opportunity to contact the Holder for additional information and, perhaps, suggest other choices without unduly restricting the Holder's ability to transfer the easement should the need arise. If rights of prior notice are given, add the following to the end of §4.03:

the Holder must notify Owners within 30 days prior to the assignment of the identity and address for notices of the organization to which the Holder intends to transfer its rights under this grant.

**4.04 Severability**

**Purpose.** If the provisions of a document are dependent on each other, the failure of one means the failure of them all. This section ensures that if one provision fails, the others remain in full force.

**4.05 Amendments; Waivers**

**Purpose.** This provision has several purposes. First, it puts Owners on notice that they should never rely on an oral statement of an employee or other representative of the Holder that is contradictory to the terms of the agreement. Second, it puts the Holder on notice of their need to inform staff or other persons performing administrative duties of the limits of their authority.

**Authorization.** The Holder must establish what authorization is needed for amendments, waivers, or consents.

**Amendment.** Ordinarily, an amendment needs to be approved by the same official or governing body that approves acceptance of the agreement. An amendment is signed with all of the formalities required of the original agreement and is intended to be recorded in the public records just as the original agreement. An amendment permanently changes the terms of the agreement.

**Consent or Waiver.** A consent or waiver (even if in writing) does not constitute an amendment. It is granted for a particular purpose and only for a limited

time due to extraordinary circumstances not contemplated under the agreement. The terms of the agreement remain unchanged but the Holder waives its right to invoke its remedies. A consent or waiver should always be memorialized in writing; it can simply be a letter from the Holder to Owners in response to a written request from the Owners to the Holder requesting a waiver to permit specified activities for a specific period of time.

#### 4.06 Counterparts

**Purpose.** There are multiple purposes for this provision. First, it makes clear that more than one counterpart of the agreement can be signed. Second, it allows the Persons granting the easement and the Holder to exchange signature pages signed separately rather than circulate original documents back and forth to collect necessary signatures.

#### 4.07 Guides to Interpretation

**Purpose.** This section assists readers in interpreting the document correctly.

#### 4.08 Entire Agreement

**Purpose.** This section establishes that the written text of the grant signed by the Owners and the Holder is final and definitive. Whatever was proposed in previous drafts and said in previous negotiations is

of no further consequence in interpreting the intentions of the parties.

**Representations in Prior Agreement.** You may want to modify this section if there are representations, warranties, or agreements contained in earlier communications that are intended to survive the grant.

#### 4.09 Incorporation by Reference

**Purpose.** The purpose is to avoid needless repetition of phrases.

#### 4.10 Binding Agreement

**Purpose.** This section sets forth the understanding of the Owners and the Holder that the grant is not just the agreement of the undersigned persons but binds and benefits all persons who succeed to their respective interests.

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#### OPTION: PROVIDE FOR EASEMENT TERMINATION IF THE PROJECT DOESN'T PROCEED

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The supplemental provisions contain information and instructions to “Provide for Termination and Release if Project Doesn’t Proceed.”

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## Closing Matters

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

**Signature Lines.** Add as many signature lines as are necessary to accommodate the number of Persons who will be signing the agreement.

The signature lines assume that the Owners are individual people. If an Owner is a corporation, partnership, or other entity, signature lines similar to those provided for the Holder should be substituted. Likewise, a form of acknowledgment similar to that provided for the Holder should be substituted for the form provided in the model, which is appropriate only for individual Owners.

**Joinder/Acceptance.** If a Beneficiary desires to join in the agreement to evidence its acceptance, an additional signature line should be added as follows:

Acceptance by Beneficiary:

[NAME OF BENEFICIARY]

\_\_\_\_\_ By: \_\_\_\_\_  
Name:  
Title:

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

**Acknowledgment.** The date of the acknowledgment should not be earlier than the date of the grant. (See the commentary to the opening recitals.)

**Exhibits.** Check that all exhibits and schedules referenced in the grant are attached before it is signed and recorded in the Public Records.

# Style Guide

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## Style Guide to the Model

### Fonts

The fonts used in the model are 10.5 pt. Garamond for the main body of text and 14 and 10.5 pt. Garamond bold for article and 1<sup>st</sup> level section headings.

Italics are generally avoided due to the risk that if formatting is inadvertently lost during the drafting process, the error might be missed and the intended meaning lost.

### Capitalization

Words with the first letter capitalized signify a term defined either upon its first usage in the document or in the model section “Guides to Interpretation.”

To reinforce the role of capitalization in signifying defined terms, superfluous capitalization is generally avoided outside its use in headings. The words *article*, *section*, and *exhibit*, for example, appear in small case.

### Numbers

When a number is used, it appears only in a single form, either spelled out or Arabic numeral—not both. Whole numbers from zero to nine are spelled out. Whole numbers of 10 or greater use Arabic numerals.

### Punctuation

Commas and periods are placed inside of a closing quotation mark as per the illogical but exceedingly popular American style.

The model uses the Oxford comma, sometimes called the serial comma. The Oxford comma appears before the *and* or *or* in a list of three or more items. (Robust endorsements and contrary opinions concerning the Oxford comma can be found at many websites.)

### Cross-Referencing

References to other provisions, when needed or desired for clarity, refer to articles or “this agreement” rather than specific sections and subsections wherever this can be done without loss of meaning. A common drafting error is to add or delete paragraphs but not catch all the changes that are consequently necessary for cross-references; the model’s approach seeks to minimize the opportunities for that error to occur.

### Other

“Headings” and numbering must be read in context to understand whether one is reading an actual heading, a full provision, or an item on a list that is part of a larger provision.

Blanks in the text (shown as \_\_\_\_\_) are intended to be filled in by the user and the parenthetical default content (e.g., “500 if not otherwise noted”) deleted.

The article *the* is not used before *the Holder*.

## Style Guide to the Commentary

The stylistic practices used in the model generally carry into the commentary.

### Fonts

The font Gil Sans MT is used for comments. Garamond is used for optional and sample provisions that could be used to customize the model; this font is also used in the model. Rockwell is used for the captions of material addressing options for customizing the model.

### Italics and Quotation Marks

Italics are generally used for the following purposes:

- For emphasis or contrast, titles of major works (including guides and model documents published by the Pennsylvania Land Trust Association), and foreign words.
- When words or terms are referred to within a sentence as words or terms. Examples: (1) “The term *Oligarchy* is defined in the supplemental provisions.” (2) “At the beginning of sentences, rather than using a symbol, *Section* is spelled out.” (3) There is a clear distinction between the *undersigned Owners* (those who sign the document) and *Owners* (the signers and all those who hold an interest in the Property after them).” Note that quotation marks may serve this purpose in particular instances where they seem to better serve readability and understanding.

Quotation marks are generally used for the following purposes:

- For referencing the headings and content falling under those headings in the commentary. For example, “See the supplemental provision’s “Adding Conservation Objectives” for suggestions on how to protect cultural resources associated with conservation projects.”
- For their standard uses with titles of small works, direct quotations, euphemisms, and content that shouldn’t be taken at face value.

### Terminology

The word *model* signifies the *Model Access Easement for Environmental Stewardship*.

A reference to a guide followed by the guide’s name with no further identifying information signifies that the guide is published by the Pennsylvania Land Trust

Association and is available for viewing and download at [ConservationTools.org](https://www.conservations.org).

A reference to a model legal document with no further identifying information signifies that the model is published by the Pennsylvania Land Trust Association and is available for viewing and download at [ConservationTools.org](https://www.conservations.org).

In the model, the phrase “this grant” is used to communicate that the only document referred to is itself—the definitive instrument signed by the parties. The commentary instead refers to “*the grant*” to signify that it is not limited to one and only one definitive document but to many instruments derived from the model and tailored for specific transactions.

Terms defined in the model that appear in optional or sample text in the commentary that could be inserted into the model are always capitalized consistent with the model’s capitalization practice. Those same terms generally appear with capitalization throughout the commentary to indicate that their meanings as defined in the model continue to hold wherever they appear. However, there are exceptions and complexities:

- In the model, there is a clear distinction between the *undersigned Owners* (those who sign the document granting the conservation easement) and *Owners* (the signers and all those who hold an interest in the Property after them). In the commentary, the word *Owners* is used in a more general sense and, depending upon the context, includes not only the *Owners* and the *undersigned Owner* or *Owners* identified in a particular grant but also landowners subject to trail easements generally and landowners who are contemplating a grant of easement.
- Similarly, the word *the Holder* in the commentary is used in a more general sense than the defined term in the model. Depending upon the context, it includes organizations and governments who currently hold or may hold easements in the future.

References to the *commentary*, *supplemental provisions*, *style guide*, and *model* do not receive initial capitalization.

The symbol “§” followed by a number or a number – letter combination generally denotes a specific section or subsection of the model. At the beginning of sentences, *Section* or *Subsection* is spelled out. In commentary headings that track the model sections and subsections, the symbol is omitted.

# Supplemental Provisions

## Highlight Immunity Provided by the Environmental Good Samaritan Act

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### (add section to article I)

If desired, a section may be added to article I to highlight that the Owners and/or the Holder are entitled to the limitations of liability afforded to qualified water pollution abatement projects under the Environmental Good Samaritan Act (27 Pa. C.S. §8101 *et seq.*). The purposes of the Environmental Good Samaritan Act are as follows:

[T]o encourage the improvement of land and water adversely affected by mining and oil and gas extraction, to aid in the prevention and abatement of the pollution of rivers and streams, to protect and improve the environmental values of this Commonwealth and to eliminate or abate hazards to health and safety. The purpose of this chapter is to improve water quality and to control and eliminate water pollution resulting from mining or oil or gas extraction or exploration by limiting the liability which could arise as a result of the voluntary reclamation of abandoned lands or the reduction and abatement of water pollution.<sup>1</sup>

If neither Owners nor the Holder have rights to immunity under the Good Samaritan Act, do not use the Good Samaritan provisions offered in this section.

For a description of the scope of the immunity available to Owners and the Holder, see the Appendix attached to this Commentary.

The following text may be incorporated into the document, but the immunity provided by the Good Samaritan Act will apply if the requirements for eligibility are met whether or not any provision is included in the Easement:

### 1.0\_ Environmental Good Samaritan Act

This Project is intended to meet the requirements for immunity from liability accorded to water pollution abatement projects under the Pennsylvania Environmental Good Samaritan Act (27 Pa.C.S. §8101 *et seq.*) (the “Good Samaritan Act”).

**(a) Consideration to Owners.** Owners confirm that Owners have not received and will not receive

any fee or other consideration for the grant of this Easement or Owners’ participation in the Project.

If the Owners receive a fee or other consideration for the grant of the Easement, omit subsection (a). There will be no immunity available for Owners under the Good Samaritan Act. See “Provide for Access Fee” in these supplemental provisions.

**(b) Consideration to Holder.** Holder confirms that Holder will provide the equipment, materials, and services included in Construction at no cost to Owners.

If the Holder receives payment above cost for the Construction, omit subsection (b). There will be no immunity available to the Holder under the Good Samaritan Act.

If the Holder charges the Owner at cost for Construction, subsection (b) set forth above should be modified to substitute “at the Holder’s cost” for “at no cost” to Owner. Immunity will still be available to the Holder under the Good Samaritan Act.

### (c) Department Approval

- (1) Holder has submitted to the Pennsylvania Department of Environmental Protection (“PADEP”) a detailed written plan describing the Project which plan has been approved by PADEP as required by §8105 of the Good Samaritan Act.
- (2) PADEP has given, or will give prior to commencement of the Project, public notice of the Project as required by §8105(b) of the Good Samaritan Act.
- (3) The Project will be conducted under a general permit issued by PADEP which (A) encompasses all of the activities included in the Project; and (B) was issued in place of any required stream encroachment, earth disturbance or national pollution discharge elimination system permits.

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<sup>1</sup> 27 Pa. C.S. §8103

The requirements set forth in subsections (c)(1), (2), and (3) must be met for the Project to qualify for immunity under the Good Samaritan Act.

## Provide for Access Fee

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### (replace section 1.05)

If the Owners are to receive consideration for the grant at times other than closing, you may want to re-work §1.05 to address this complexity. For example:

#### 1.05 Access Fee

In consideration of this grant, Holder is to pay to Owners a fee (the “Access Fee”) in the amount of \$\_\_\_\_\_. The Access Fee is due payable as follows: \_\_\_\_% upon closing and \_\_\_\_% upon commencement of initial Construction.

Or:

#### 1.05 Access Fee

In consideration of this grant, Holder is to pay to Owners a fee (the “Access Fee”) in the amount of \$\_\_\_\_\_ per year, the first payment due and payable at closing and thereafter on each anniversary of the closing during the term of this grant.

## Grant Access Easement in Conjunction with a Conservation Easement

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### (modify section 1.05)

If the Owners are delivering this grant of access easement in connection with a grant of conservation easement, change the caption of this section to “Consideration; Conservation Easement” and add a description of the relationship between the easements to the beginning of the section. Example:

This grant has been executed and delivered in connection with a grant of conservation easement (the “Conservation Easement”) dated as of the Easement Date between the undersigned Owner or Owners and [Holder or, if not Holder under the access easement grant, identify that entity]. The Conservation Easement is intended to be recorded prior to this agreement and the rights of Owners and Holder under this agreement must be exercised under and subject to applicable restrictions contained in the Conservation Easement. Article 6 of the Conservation Easement incorporates this grant into

the Conservation Easement as a single transaction—if a donation, a single donation, and, if a sale in whole or in part, a single sales transaction. In addition to Holder identified above in this grant, the rights of Holder to enforce this grant may be exercised by the Holder of the Conservation Easement and any Beneficiaries (as defined in the Conservation Easement).

**Sale or Bargain Sale.** Clarify that the purchase price inserted into this section applies to both the grant of access easement and the Conservation Easement by adding to the end: “*and the Conservation Easement*” or, if the purchase price is for this grant only, add an additional sentence: “*None of this consideration is attributable to or allocable to the Conservation Easement.*”

## Add Beneficiaries

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### (modify section 2.04)

**Add Beneficiaries.** You may want the option of providing a project partner or other entity rights in regards to the easement, either at the time of the easement’s establishment or at some later date. To provide

for this possibility, you list these “Beneficiaries” in this section. Examples of possible Beneficiaries:

- Partnering watershed association
- County in which the Property is located

- County conservation district in the county in which the Property is located
- Pennsylvania Department of Environmental Protection

**Modify Trigger.** The model provides that a Beneficiary may only exercise the rights of the Holder if the Holder fails to complete or maintain the Project. You may modify this trigger as appropriate, for example, by deleting “or maintain.”

**No Trigger; Limited Rights.** You may want to provide a Beneficiary with very limited rights that require no triggering event. For example:

The County Conservation District may enter the Property to inspect the Project Area and monitor progress on the Project. This right does not include the right to invite other Persons onto the Property for educational purposes.

**Modify Rights.** The model provides a Beneficiary all the rights of the Holder under the easement if the condition (failure to complete or maintain) occurs. Alternatively, a Beneficiary could be granted only one or two

of the Holder’s rights. For example, you can add to the section:

The rights of Holder that may be exercised by the Beneficiary [name Beneficiary if there is more than one and they have different rights] are limited to: [pick one or more]

1. The right to inspect the Project Area and monitor the Project.
2. The right to compel transfer of Holder’s rights and duties under this agreement to a qualified organization under §170(h) of the Internal Revenue Code should Holder fail to maintain the Project for a specified period of time.
3. The right to prior approval (not to be unreasonably withheld or delayed) of an amendment to this grant.
4. The right to approve transfer of Holder’s interests in the easement (such approval not to be unreasonably withheld or delayed).
5. All of Holder’s rights except for inviting others to view or study the Project Area.

## Itemize Owners’ Rights

### (expand subsection 3.01(a))

Subsection 3.01(a) provides the Owners with no more rights than they would have under the law absent the provision. The provision, however, does serve to highlight that the Owners still have rights to use the Property. Additional comfort and clarification may be given to the Owners by listing at the end of the subsection items of particular concern to them as “Owners’ rights.” For example:

Owners’ rights include:

- (1) Mitigating Risk. Taking action reasonably prudent to remove or mitigate against an unreasonable risk of harm to Persons.
- (2) Grants to Others. Granting leases, licenses, easements, and rights-of-way to Persons other than Holder but only for those facilities, improvements, activities, and uses permitted to Owners under this grant.
- (3) Low-impact Activities. Walking, bird watching, and hunting.

This list is a not intended to be exhaustive.

#### (1) Mitigating Risk

**Purpose.** This item assures the Owners that Owners can take such action as is reasonably prudent whenever they observe a potentially dangerous condition; for example, a tree about to fall or a rock slide across the Access Corridor. This does not require the Owners to

take action, but they are permitted to do so in the interest of public safety.

**Notice.** The Holders may want to be informed if the Owners find it necessary to exercise rights to mitigate risk. In this case, you may add a sentence, such as the following to the end of this provision:

Owners must notify Holder of plans to take such actions or, if circumstances prevent advance notice, notify Holder of actions taken as soon as reasonably possible.

#### (2) Grants to Others

**Purpose.** This item clarifies that the Owners may not grant to other Persons rights with respect to the Property that would, if exercised, conflict with the Holder’s rights within the Property. For example, if the Owners are permitted to engage in agricultural activities within the Utility Corridor, then they can enter into a lease or other agreement for that activity. Another example: the Owners may grant easements to public or private entities to provide access drives and utilities as long as the rights granted don’t interfere with the Holder’s rights.

**Notice.** The Holders may want to be informed if the Owners intend to grant rights to other Persons. In this case, you may add a sentence to the end of this provision, such as the following:

Owners must give Holder notice at least 30 days before making such grants.

### (3) Low-Impact Activities

**Purpose.** Expand the list of activities contained in this item as appropriate.

## Provide for Termination and Release if Project Doesn't Proceed

### (add section to article 4)

Sometimes, the Owners may be agreeable to a restoration project but only if the project will proceed in a timely manner. And the Holder may need project funding from a funder who wants the Holder to actually hold the access easement before considering making a contribution. In this case, the Owners could grant an easement that includes a release and termination clause. For example, you could add the following section to article 4:

#### 4.0\_ Termination and Release

If Holder does not receive firm written commitments of at least \$\_\_\_\_\_ in total for Construction by \_\_\_\_\_, 20\_\_, then either Holder or Owners may terminate the easement and, upon such termination, Holder and Owners must sign and deliver a release of the recorded document.

# Appendix: Good Samaritan Act Immunities

## Owners' Immunity

If the requirements for eligibility under the Good Samaritan Act are met:

- The Owners are immune from liability for any injury or damage suffered by the person implementing the project while the person is within the Project work area.<sup>2</sup>
- The Owners are immune from liability for any injury to or damage suffered by a third party that arises out of or occurs as a result of an act or omission of a person implementing the project which occurs during the implementation of the project.<sup>3</sup>
- The Owners are immune from liability for any injury to or damage suffered by a third party which arises out of or occurs as a result of a project.<sup>4</sup>
- The Owners are not deemed to assume legal responsibility for or incur liability for any pollution resulting from a project.<sup>5</sup>

- The Owners are not subject to a citizen suit filed pursuant to §601 of the Clean Streams Law for pollution resulting from a project.<sup>6</sup>
- The Owners are immune from liability for the operation, maintenance or repair of the project facilities constructed or installed during the project unless an Owner negligently damages or destroys the project facilities or denies access to those persons who operate, maintain or repair the project facilities.<sup>7</sup>

## Holder's Immunity

The Good Samaritan Act provides immunity to any person who provides equipment, materials or services at no cost or at cost for a water pollution abatement project (including the Holder) as follows:

- The person is immune from liability for any injury to or damage suffered by a person which arises out of

<sup>2</sup> 27 Pa. C.S. §8106(a)(1)

<sup>3</sup> 27 Pa. C.S. §8106(a)(2)

<sup>4</sup> 27 Pa. C.S. §8106(a)(3)

<sup>5</sup> 27 Pa. C.S. §8106(a)(4)

<sup>6</sup> 27 Pa. C.S. §8106(a)(5)

<sup>7</sup> 27 Pa. C.S. §8106(a)(6)

or occurs as a result of the facilities constructed or installed during the project.<sup>8</sup>

- The person is immune from liability for any pollution emanating from the facilities constructed or installed during the project unless the person [sic] affects an area that is hydrologically connected to the project work area and causes increased pollution by activities which are unrelated to the implementation of the project.<sup>9</sup>
- The person is not deemed to assume legal responsibility for or incur liability for the operation, maintenance, and repair of the facilities constructed or installed during the project.<sup>10</sup>
- The person is not subject to a citizen suit under §601 of the Clean Streams Law for pollution emanating from the facilities constructed or installed during the project.<sup>11</sup>

### Exceptions to Owners' Immunity

No immunity is granted to Owners if Owners charge an access fee or require other consideration before allowing access to the land for the purpose of implementing the project.<sup>12</sup>

Even if Owners have received no consideration, the scope of Owners' immunity under the Good Samaritan Act *excludes* (and the Owners remain legally responsible for):

- Injury or damage resulting from an Owner's acts or omissions which are reckless or constitute gross negligence or willful misconduct.<sup>13</sup>
- The unlawful activities of an Owner.<sup>14</sup>
- Damage to adjacent landowners or downstream riparian landowners which results from the project where written notice or public notice of the proposed project was not provided.<sup>15</sup>

### Exceptions to the Holder's Immunity

Persons (including the Holder) who provide equipment, materials, or services for consideration above cost are not entitled to any immunity under the Good Samaritan Act.<sup>16</sup>

The scope of immunity under the Good Samaritan Act for persons who provide equipment, materials, or services at no cost or at cost for a project *excludes* (and the person remains responsible for):

- Injury or damage resulting from the person's acts or omissions which are reckless or constitute gross negligence or willful misconduct.<sup>17</sup>
- The unlawful activities of that person.<sup>18</sup>
- Damages to adjacent landowners or downstream riparian landowners which result from a project where written notice or public notice of the proposed project was not provided.<sup>19</sup>

<sup>8</sup> 27 Pa. C.S. §8107(a)(1)

<sup>9</sup> 27 Pa. C.S. §8107(a)(2)

<sup>10</sup> 27 Pa. C.S. §8107(a)(3)

<sup>11</sup> 27 Pa. C.S. §8107(a)(4)

<sup>12</sup> 27 Pa. C.S. §8106(c)(2)

<sup>13</sup> 27 Pa. C.S. §8106(c)(1)

<sup>14</sup> 27 Pa. C.S. §8106(c)(3)

<sup>15</sup> 27 Pa. C.S. §8106(c)(4)

<sup>16</sup> 27 Pa. C.S. §8107(a)

<sup>17</sup> 27 Pa. C.S. §8107(b)(1)(i)

<sup>18</sup> 27 Pa. C.S. §8107(b)(1)(ii)

<sup>19</sup> 27 Pa. C.S. §8107(b)(1)(iii).