

# Model Conservation Easement



*The Model Grant of Conservation Easement and Declaration of Covenants with Commentary provides users with a state-of-the-art legal document and guidance to customize it to nearly any situation. No easement document has benefited from more real-world testing and peer review.*

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## Introduction

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### An Easement Is Only as Strong as the Document Underpinning It

A conservation easement can only be as strong as the legal document—the grant of easement and declaration of covenants—that underpins it. Easement documents written today should take advantage of the innumerable lessons learned in easement projects across the country in recent decades. This is easier said than done. Very few people (or, for that matter, groups of people) have dedicated enough of their time to easement drafting (including understanding its stewardship and enforcement consequences) to be able to draft a quality document that optimizes conservation protections and ease of understanding while avoiding mistakes that others have unwittingly made previously.

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

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

### Take Advantage of Collective Experience

The model, now in its [seventh edition](#), is informed by many years of regular and heavy use by land trusts, governments, and landowners across Pennsylvania and the nation. No conservation easement document has benefited from more real-world testing, user scrutiny, and cycles of peer review and improvement. The latest edition alone underwent six rounds of public review and critique before being finalized.

### Understand the Reasoning; Tailor Provisions Appropriately

The model's expansive commentary explains the reasoning behind every provision, offers instructions on applying the model to particular circumstances, and provides alternative and optional provisions to address a variety of variables. The commentary helps users understand the sections of the document where tailoring is appropriate or desirable, as well as provisions that are generally best left untouched.

The model provides for three levels of protection to deal with variations in conservation objectives across a property, but one or two levels can easily be removed for use with simpler projects.

## Find the Latest Version Online

Thanks to the Pennsylvania Land Trust Association's generous donors, the latest version of the model, as well as the commentary and a quick start guide, is always available free-of-charge at [ConservationTools.org](http://ConservationTools.org).

## Help Improve the Model

The Pennsylvania Land Trust Association is deeply committed to supporting the model and commentary. Suggestions for improvements are always welcome. Please direct comments to the Association via [phone](#), [email](#), or [web form](#).

## Advantages of Using the Model

Users benefit from the [model](#) in multiple ways:

- They avoid the legal costs of unnecessarily reinventing easement documents and provisions. They can focus legal expenditures on addressing very specific issues unique to a particular project.
- The many lessons of the past are built into the content of the model and its commentary. The Association judiciously updates the commentary and, less frequently, the model, when it is necessary or desirable to address new user experiences and advances in the field of conservation. This enables individuals to stay on the cutting edge of easement preparation with minimal effort.
- With a wide range of organizations using the same document, there are many people at many different organizations working within the same document framework. This facilitates people helping one another in addressing easement issues.
- The model brings assurance to both the potential easement holder and grantor that each is being treated fairly. Both parties and their respective legal counsels have the same access to the same model language, alternative provisions, and explanatory material when discussing and negotiating the easement transaction.
- Legal counsel, particularly those without extensive easement experience, are comforted by (1) having full access to the same widely accepted materials as the other party and (2) knowing that the model has been vetted by numerous attorneys through

the years and huge numbers of model-based documents have been recorded. (They are also less likely to try to "improve" a proven document—thus enabling the client to avoid billings for rewrites of questionable or marginal value.)

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

## PALTA's Approach to Managing the Model and Serving Conservation

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

- **Keeping it fresh.** The Association is always looking for ways to improve its guidance and responds to every comment submitted.
- **Providing transparency.** The Association engages users in considering major changes to the model. For example, the seventh edition was preceded by months of discussions and six drafts published for public review and critique. The Association also posts explanations for changes that are ultimately made.
- **Being judicious in making changes.** Especially since the model is a mature, well-developed tool that many organizations have customized, the Association endeavors to be conservative in considering modifications. In practice, this means that the model only changes every several years. The commentary, in contrast, is updated more frequently—whenever the Association sees an opportunity to better help users use the model.
- **Focusing on conservation.** The model's covenants and administrative rules are designed to uphold conservation in the long run without unduly burdening either landowners or holders. For example, unlike many easements, the model doesn't prohibit an activity simply because the activity is commercial; rather, restrictions are based on the

potential for activities to harm the land’s conservation values.

- **Being consistent.** The Association adheres to strict, established rules regarding the structure and content of the model when making modifications. For example: plain language is used wherever possible; words and terms are defined wherever meanings could reasonably be misconstrued against the interests of conservation; and cross-references to specific sections are avoided to prevent drafting errors.
- **Providing training.** The Association provides workshops on the model at Rally, the Pennsylvania Land Conservation Conference, and other learning venues.
- **Offering assistance.** Although it does not provide legal counsel, the Association helps land trust staff with their questions regarding the model and its application to projects.

## Using the Model

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### Quick Start Guide

If you are new to the model, take a few minutes to review the [Quick Start Guide](http://conservationtools.org/library_items/323) at [http://conservationtools.org/library\\_items/323](http://conservationtools.org/library_items/323).

### The Commentary

When in doubt, check the commentary. It explains the purpose of each provision and, in many cases, provides alternatives that may be useful in particular situations.

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.

### Involve Legal Counsel

Although the model helps users avoid many legal expenses, be sure to involve legal counsel before completing a project. A good attorney will ensure that, given particular circumstances, the easement document does what you intend it to do.

The model is tailored to Pennsylvania state law, and the Pennsylvania Department of Conservation and

Natural Resources requires its use for Department-funded grant projects. The model has been applied to numerous local government and federally-funded projects and has been adapted for use in states from Arkansas to Alaska.

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

### Amending and Restating a Grant of Easement

The model is often adapted for the purpose of amending and restating a grant of conservation easement. The topic of amending and restating grants of easement is addressed in the commentary’s supplemental provisions as well as in the guide [Amending and Restating Grants of Conservation Easement: Best Practices to Document Change](#).

### Riparian-Focused Model

The Pennsylvania Land Trust Association also publishes a model document for the specific purpose of protecting riparian buffers along waterways. The third edition of the [Model Grant of Conservation Easement and Declaration of Covenants for Riparian Buffer Protection](#) is based on the model grant described here.

## Notes on the New Edition

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The [model](#) was originally published in 2005. The seventh edition was published in December 2016.

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

With the addition of new optional provisions and explanatory material, the commentary was expanded by 42% for the new edition.

The model’s publication history is as follows:

1st edition – Jul. 2005

2nd edition – Apr. 2006

3rd edition – Sep. 2007  
 4th edition – Apr. 2008  
 5th edition – Sep. 2008  
 6th edition – Oct. 2011  
 7th edition – Dec. 2016

## Resources at ConservationTools.org

To find experts and other information on the topics covered by this guide, see the right column of the on-line edition at <http://conservationtools.org/guides/13>.

### Related Guides

[Amending and Restating Grants of Conservation Easement](#)

[Amending Grants of Conservation Easement](#)

[Conservation Easement](#)

[The Nature of the Conservation Easement and the Document Granting It](#)

[An Introduction to Stewardship Funding Arrangements](#)

[Guide to the Conservation and Preservation Easements Act](#)

[Holders, Beneficiaries and Backup Grantees](#)

[Model Legal Documents](#)

[Mortgage Subordination](#)

[Pledges and Donation Agreements](#)

### Related Library Topics

[Conservation Easements](#)

[Model Real Estate Documents](#)

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## Submit Comments

Help improve the next edition of this guide. Email your suggestions to the Pennsylvania Land Trust Association at [aloza@conserveland.org](mailto:aloza@conserveland.org). Thank you.

## Acknowledgements

[Andrew M. Loza](#) authored this guide; [Nate Lotze](#) edited it.

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