

**MODEL**

# **Declaration of Public Trust**

**with Commentary**

including an option for a grant of conservation easement



Model updated 10/4/2018  
Commentary updated 8/16/2022

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# Preface

## Formalizing Intentions, Ensuring Protections, and Making Exceptions

People rely on their parks and other public open spaces as stable, reliable places of comfort, rest, and renewal in their lives. People make decisions on where to reside and work based on proximity to these special places. They expect that these places will always be there for them. This expectation is supported by the Pennsylvania Constitution, centuries of common law, and statutes enacted by the General Assembly.

It is not necessary for land to be *formally dedicated* as parkland or for other open space purposes for the law to recognize it as land held in trust for the public by a municipality or county (rather than land that the local government is free to develop or dispose of at will). However, there is gray area in determining: (1) whether land has been informally dedicated for park or other open space purposes and (2) if informally or formally dedicated, whether a particular government action affecting the land is allowable.

To reduce risks of confusion, misunderstanding, and ill will regarding acceptable and non-acceptable uses of land held by a municipality or county, the local government may want to make a practice of formally dedicating lands it intends to hold in trust for the public and, at that time, explicitly stating any reservations, exceptions, or limitations applicable to the dedication. WeConservePA provides the following model legal documents to help governments accomplish this:

- **Model Declaration of Public Trust [basic form].** By signing and recording the declaration, the local government permanently dedicates the land to certain public purposes. It is the shortest and simplest of the three alternatives.
- **Model Declaration of Public Trust [expanded form].** This alternative expands on the basic form, providing options to exclude portions of the land from the dedication and detail the activities, uses, facilities, and improvements that are considered consistent with the public purposes.
- **Model Declaration of Public Trust and Grant of Conservation Easement.** This alternative builds on the expanded form. It grants to a [land trust](#) an interest in the property—a conservation easement—that empowers the organization to uphold the public purposes of the dedication and enforce its covenants should the need arise in the future. It provides an additional layer of assurance that the public purposes set forth in the declaration will be respected in perpetuity.

A single commentary addresses the three models. The commentary explains the reasoning behind each provision and provides alternative and optional provisions that may be useful in particular situations.

## Public Purposes

The models serve to dedicate land to public purposes in perpetuity. These purposes, briefly stated, are to:

- Assure public access to the land for outdoor recreation, and

- Assure that the land remains predominantly undeveloped and provides open space benefits.

Local governments may also use the models to:

- Clearly exclude certain property interests from the dedication (e.g., a location for a future maintenance garage, salt dome, or administration building), ensuring that these interests aren't inadvertently dedicated, whether formally or informally;
- Ensure the character of the land is not dramatically changed (e.g., replacing century-old woodland and walking trails with tennis courts); or
- Support an argument to the county assessment board that the land is actually and regularly used for public purposes and thus exempt from taxation.

## The Pennsylvania Constitution

Article 1 of the Pennsylvania Constitution is essentially the Commonwealth's version of the Bill of Rights. The last two sentences in section 27 of article 1 state that:

Pennsylvania's *public natural resources* are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

The model documents provide municipalities with tools for affirming properties as public natural resources.

## Improve the Guidance

WeConservePA welcomes suggestions for improving its guidance. Please email your comments to [info@WeConservePA.org](mailto:info@WeConservePA.org).

## Acknowledgements

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

H. Fintan McHugh, Esq., the Honorable Kate M. Harper, Esq., and Judith B. Thomas, AICP, critically reviewed drafts and provided suggestions that shaped the models.

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Colcom Foundation



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Prepared by and return to:

## Model Declaration of Public Trust

basic form

v. 2018.10.04

Parcel identification:

published by WeConservePA

# Declaration of Public Trust

THIS DECLARATION OF PUBLIC TRUST is made by \_\_\_\_\_, (the "Declarant") on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

## Background

**Land.** The real property that is the subject of this declaration is identified briefly below and more fully described in exhibit A attached to and incorporated into this declaration (that property, the "Land").

Parcel identification:

Street address:

Acreage:

Municipality and county:

**Declarant.** The Declarant is a \_\_\_\_\_ of the \_\_\_\_\_ class of the Commonwealth of Pennsylvania.

**Constitution.** Article 1, Section 27 of the Pennsylvania Constitution states that:

Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

**Affirmation.** The Declarant makes this declaration to affirm the Land as a public natural resource benefitting the people as addressed in the Pennsylvania Constitution, dedicating the Land or confirming the Land's dedication to the Public Purposes described below.

**Donated or Dedicated Property Act.** This declaration evidences a dedication of land or buildings as public facilities pursuant to the act of December 15, 1959 P.L. 1772, 53 P.S. §§3381-3386 (the "Donated or Dedicated Property Act").

**Rights and Remedies.** Rights and remedies arising out of this declaration are cumulative; they neither limit nor are limited by any rights or remedies arising from the Donated or Dedicated Property Act or other applicable authority available for upholding the Public Purposes.

**Action.** This declaration is made pursuant to resolution \_\_\_\_\_ of the Declarant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## **Dedication**

**Dedication to Public Purposes.** The Declarant formally and unequivocally dedicates the Land to the following public purposes (collectively, the “Public Purposes”) in perpetuity:

- (a) To assure public access to the Land for outdoor recreation; and
- (b) To assure that the Land will remain predominantly undeveloped and provide, for the public, open space benefits, which may include maintaining and improving the quality of water resources, both surface and groundwater, including replenishing their supply; establishing and protecting scenic views and vantage points for those views; preserving existing, planned, and potential outdoor public recreation and conservation areas; preventing and reducing floods; providing natural habitat for animals, plants, and fungi; preventing the loss and depletion of soil; conserving farmland for agricultural production and forestland for production of timber and other forest products; preserving features of historic, geologic, or biologic significance; and providing for sound land development by providing open space within and around developed lands.

**Duty.** The Declarant, in dedicating the Land, acknowledges its duty as trustee to hold and conserve the Land in service to the Public Purposes.

INTENDING TO BE LEGALLY BOUND, the Declarant has signed and delivered this declaration as of the date set forth in the opening recital of this document.

\_\_\_\_\_

By: \_\_\_\_\_(Seal)

By: \_\_\_\_\_(Seal)

This document is based on the  
Model Declaration of Public Trust (basic form, v. 2018.10.04)  
provided by WeConservePA.

Nothing contained in the model, which was prepared in the context of Pennsylvania law, is intended to be relied upon as legal advice or to create an attorney-client relationship. There is no guarantee that it is up to date or error free. 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 \_\_\_\_\_, who acknowledged him/herself to be the \_\_\_\_\_ of \_\_\_\_\_ Declarant, a Declarant of the second class of the Commonwealth of Pennsylvania, 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:

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Prepared by and return to:

## Model Declaration of Public Trust

expanded form

v. 2018.10.04

Parcel identification:

published by WeConservePA

# Declaration of Public Trust

THIS DECLARATION OF PUBLIC TRUST is made by \_\_\_\_\_, (the “Declarant”) on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

## 1. Background

- 1.1 **Land.** The real property that is the subject of this declaration is identified briefly below and more fully described in exhibit A attached to and incorporated into this declaration (that property, the “Land”).

Parcel identification:

Street address:

Acreage:

Municipality and county:

- 1.2 **Declarant.** The Declarant is a \_\_\_\_\_ of the \_\_\_\_\_ class of the Commonwealth of Pennsylvania.

- 1.3 **Constitution.** Article 1, Section 27 of the Pennsylvania Constitution states that:

Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

- 1.4 **Affirmation.** The Declarant makes this declaration to affirm the Land as a public natural resource benefitting the people as addressed in the Pennsylvania Constitution, dedicating the Land or confirming the Land’s dedication to the Public Purposes described below.

- 1.5 **Donated or Dedicated Property Act.** This declaration evidences a dedication of land or buildings as public facilities pursuant to the act of December 15, 1959 P.L. 1772, 53 P.S. §§3381-3386 (the “Donated or Dedicated Property Act”).

- 1.6 **Rights and Remedies.** Rights and remedies arising out of this declaration are cumulative; they neither limit nor are limited by any rights or remedies arising from the Donated or Dedicated Property Act or other applicable authority available for upholding the Public Purposes.

- 1.7 **Action.** This declaration is made pursuant to resolution \_\_\_\_\_ of the Declarant on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

## 2. Dedication

- 2.1 **Dedication to Public Purposes.** The Declarant formally and unequivocally dedicates the Land to the following public purposes (collectively, the “Public Purposes”) in perpetuity:
- (a) To assure public access to the Land for outdoor recreation; and
  - (b) To assure that the Land will remain predominantly undeveloped and provide, for the public, open space benefits, which may include maintaining and improving the quality of water resources, both surface and groundwater, including replenishing their supply; establishing and protecting scenic views and vantage points for those views; preserving existing, planned, and potential outdoor public recreation and conservation areas; preventing and reducing floods; providing natural habitat for animals, plants, and fungi; preventing the loss and depletion of soil; conserving farmland for agricultural production and forestland for production of timber and other forest products; preserving features of historic, geologic, or biologic significance; and providing for sound land development by providing open space within and around developed lands.
- 2.2 **Duty.** The Declarant, in dedicating the Land, acknowledges its duty as trustee to hold and conserve the Land in service to the Public Purposes.

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**The following optional provision may be included (and modified as appropriate) to exclude from the dedication certain property interests that the Declarant wishes to reserve for other purposes.**

- 2.3 **Reservation.** The Declarant reserves the right to install, or allow the installation of, underground improvements. The improvements may serve Public or non-Public Purposes but must be designed and located so as not to materially affect the Public Purposes.

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**The following optional section may be included (and modified as appropriate) to provide a set of rules to guide the administration of the Land consistent with the Public Purposes.**

## 3. Covenants

To uphold the Public Purposes, the Declarant declares the following covenants running with the land.

- 3.1 **Prohibited.** Improvements, facilities, activities, and uses are prohibited within the Land except as permitted below.
- 3.2 **Permitted.** The following improvements, facilities, activities, and uses, are permitted:
- a) Trails, walkways, playgrounds, athletic fields, tracks, courts, picnic pavilions, water fountains, toilets, storage sheds, kiosks, signs, accessory lighting, and other facilities and improvements ancillary to permitted activities and uses.

- b) Outdoor recreational and outdoor educational uses.
- c) Provision of refreshments, rental of outdoor recreation equipment, and other services, provided for the sole purpose of enhancing the public's outdoor recreational experience.
- d) Resource management activities such as planting and mowing vegetation, pruning, sustainable forestry, and wildlife control.
- e) Construction, installation, and maintenance of permitted facilities and improvements.

The following optional section may be included (and modified as appropriate) to clarify matters for which there may be uncertainty or concerns regarding appropriate interpretation.

## 4. Clarifications

- 4.1 **Control Access.** The Declarant may regulate public access for consistency with the Public Purposes, avoidance of nuisances, and other public safety reasons.
- 4.2 **Leasing and Licensing.** The Declarant may lease or license portions of the Land to others to provide or assist the Declarant in providing facilities, programs, goods, services, or other amenities to the public that are consistent with the Public Purposes.

The following additional clarification may be added (and modified as appropriate) if users find it desirable to address in detail those circumstances that might conflict with the Public Purpose of assuring public access.

- 4.3 **Assure Access.** Declarant's administration of the Land, including leasing and licensing (if any), must not result in members of the public being effectively blocked from substantial access to and enjoyment of the Land, including recreational improvements, due to the imposition of charges, barriers, restrictions, or requirements that are not broadly affordable and capable of satisfaction. The greater the restrictions upon access presented by such impositions, both quantitatively and qualitatively, the more the impairment of access must be minimized.

INTENDING TO BE LEGALLY BOUND, the Declarant has signed and delivered this declaration as of the date set forth in the opening recital of this document.

\_\_\_\_\_  
By: \_\_\_\_\_(Seal)

\_\_\_\_\_  
By: \_\_\_\_\_(Seal)

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF :

ON THIS DAY \_\_\_\_\_ before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged him/herself to be the \_\_\_\_\_ of \_\_\_\_\_ Declarant, a Declarant of the second class of the Commonwealth of Pennsylvania, 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:

This document is based on the  
Model Declaration of Public Trust (expanded form, v. 2018.10.04)  
provided by WeConservePA.

Nothing contained in the model, which was prepared in the context of Pennsylvania law, is intended to be relied upon as legal advice or to create an attorney-client relationship. There is no guarantee that it is up to date or error free. It should be revised under the guidance of legal counsel to reflect the specific situation.

Prepared by and return to:

**Model Declaration of Public Trust**  
expanded form  
**and Grant of Conservation Easement**  
v. 2018.10.04  
published by WeConservePA

Parcel identification:

## **Declaration of Public Trust and Grant of Conservation Easement**

THIS DECLARATION OF PUBLIC TRUST AND GRANT OF CONSERVATION EASEMENT are made by \_\_\_\_\_, (the "Declarant") on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_, a Pennsylvania non-profit corporation (the "Holder") joins in this declaration and grant to evidence its acceptance of the rights granted to it hereunder.

### **1. Background**

- 1.1 **Land.** The real property that is the subject of this declaration and grant is identified briefly below and more fully described in exhibit A attached to and incorporated into this declaration and grant (that property, the "Land").

Parcel identification:

Street address:

Acreage:

Municipality and county:

- 1.2 **Declarant.** The Declarant is a \_\_\_\_\_ of the \_\_\_\_\_ class of the Commonwealth of Pennsylvania.

- 1.3 **Constitution.** Article 1, Section 27 of the Pennsylvania Constitution states that:

Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people.

- 1.4 **Affirmation.** The Declarant makes this declaration to affirm the Land as a public natural resource benefitting the people as addressed in the Pennsylvania Constitution, dedicating the Land or confirming the Land's dedication to the Public Purposes described below. The Declarant further grants a conservation easement to further ensure that the Public Purposes are served in perpetuity.

- 1.5 **Donated or Dedicated Property Act.** This declaration evidences a dedication of land or buildings as public facilities pursuant to the act of December 15, 1959 P.L. 1772, 53 P.S. §§3381-3386 (the “Donated or Dedicated Property Act”).
- 1.6 **Rights and Remedies.** Rights and remedies arising out of this declaration are cumulative; they neither limit nor are limited by any rights or remedies arising from the Donated or Dedicated Property Act or other applicable authority available for upholding the Public Purposes.
- 1.7 **Holder.** The Holder is a charitable corporation qualified to be a holder of conservation easements under the Conservation and Preservation Easements Act, Act of June 22, 2001 (P.L.390, No.29) (32 P.S. §§5051-5059).
- 1.8 **Authorization to Grant Easement.** The Act of January 19, (1968) 1967, P.L. 992, No. 442 entitled “Preserving Land for Open Air Spaces,” as amended by Act 154 of 2006, authorizes local governments to “transfer open space property interests to a land trust” and to “elect to accept any nominal consideration for the transfer it deems appropriate.”
- 1.9 **Action.** This declaration and grant is made pursuant to resolution \_\_\_\_ of the Declarant on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

## 2. Dedication

- 2.1 **Dedication to Public Purposes.** The Declarant formally and unequivocally dedicates the Land to the following public purposes (collectively, the “Public Purposes”) in perpetuity:
  - (a) To assure public access to the Land for outdoor recreation; and
  - (b) To assure that the Land will remain predominantly undeveloped and provide, for the public, open space benefits, which may include maintaining and improving the quality of water resources, both surface and groundwater, including replenishing their supply; establishing and protecting scenic views and vantage points for those views; preserving existing, planned, and potential outdoor public recreation and conservation areas; preventing and reducing floods; providing natural habitat for animals, plants, and fungi; preventing the loss and depletion of soil; conserving farmland for agricultural production and forestland for production of timber and other forest products; preserving features of historic, geologic, or biologic significance; and providing for sound land development by providing open space within and around developed lands.
- 2.2 **Duty.** The Declarant, in dedicating the Land, acknowledges its duty as trustee to hold and conserve the Land in service to the Public Purposes.

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The following optional provision may be included (and modified as appropriate) to exclude from the dedication certain property interests that the Declarant wishes to reserve for other purposes.

- 2.3 **Reservation.** The Declarant reserves the right to install, or allow the installation of, underground improvements. The improvements may serve Public or non-Public

Purposes but must be designed and located so as not to materially and detrimentally affect the Public Purposes.

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The following optional section may be included (and modified as appropriate) to provide a set of rules to guide the administration of the Land consistent with the Public Purposes.

### 3. Covenants

To uphold the Public Purposes, the Declarant declares the following covenants running with the land.

- 3.1 **Prohibited.** Improvements, facilities, activities, and uses are prohibited except within the Land except as permitted below.
- 3.2 **Permitted.** The following improvements, facilities, activities, and uses, are permitted:
  - (a) Trails, walkways, playgrounds, athletic fields, tracks, courts, picnic pavilions, water fountains, toilets, storage sheds, kiosks, signs, accessory lighting, and other facilities and improvements ancillary to permitted activities and uses.
  - (b) Outdoor recreational and outdoor educational uses.
  - (c) Provision of refreshments, rental of outdoor recreation equipment, and other services, provided for the sole purpose of enhancing the public's outdoor recreational experience.
  - (d) Resource management activities such as planting and mowing vegetation, pruning, sustainable forestry, and wildlife control.
  - (e) Construction, installation, and maintenance of permitted facilities and improvements.

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The following optional section may be included (and modified as appropriate) to clarify matters for which there may be uncertainty or concerns regarding appropriate interpretation.

### 4. Clarifications

- 4.1 **Control Access.** The Declarant may regulate public access for consistency with the Public Purposes, avoidance of nuisances, and other public safety reasons.
- 4.2 **Leasing and Licensing.** The Declarant may lease or license portions of the Land to others to provide or assist the Declarant in providing facilities, programs, goods, services, or other amenities to the public that are consistent with the Public Purposes.

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The following additional clarification may be added (and modified as appropriate) if users find it desirable to address in detail those circumstances that might conflict with the Public Purpose of assuring public access.

- 4.3 **Assure Access.** Declarant's administration of the Land, including leasing and licensing (if any), must not result in members of the public being effectively blocked from substantial access to and enjoyment of the Land, including recreational improvements, due to the

imposition of charges, barriers, restrictions, or requirements that are not broadly affordable and capable of satisfaction. The greater the restrictions upon access presented by such impositions, both quantitatively and qualitatively, the more the impairment of access must be minimized.

## 5. Grant of Conservation Easement

- 5.1 **Grant.** The Declarant grants and conveys to the Holder an unconditional and perpetual easement upon the Land to uphold the Public Purposes and enforce the covenants set forth above. Without limiting the scope of the grant set forth here, this grant empowers the Holder to: (a) take such action as may be necessary or desirable to block uses of the Land inconsistent with the Public Purposes or which violate the covenants; and (b) enter the Land to inspect to determine compliance with this declaration and grant.
- 5.2 **Relationship of Grant to Dedication.** The grant of conservation easement is not intended to supersede any rights of the public established by the dedication of the Land to Public Purposes.
- 5.3 **Coal Notice.** This notice is given to the Declarant solely for the purpose of compliance with Pennsylvania's Conservation and Preservation Easements Act:

**NOTICE:** The grant of conservation easement may impair the development of coal interests including workable coal seams or coal interests that have been severed from the Land.

INTENDING TO BE LEGALLY BOUND, the Declarant and Holder have signed and delivered this declaration and grant as of the date set forth in the opening recital of this document.

ON BEHALF OF DECLARANT

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_(Seal)

ON BEHALF OF HOLDER

\_\_\_\_\_

By: \_\_\_\_\_(Seal)

COMMONWEALTH OF PENNSYLVANIA :

COUNTY OF :

ON THIS DAY \_\_\_\_\_ before me, the undersigned officer, personally appeared \_\_\_\_\_, who acknowledged him/herself to be the \_\_\_\_\_ of \_\_\_\_\_ Declarant, a Declarant of the second class of the Commonwealth of Pennsylvania, 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:

This document is based on the  
Model Declaration of Public Trust  
(expanded form including the grant of conservation easement, v. 2018.10.04)  
provided by WeConservePA.

Nothing contained in the model, which was prepared in the context of Pennsylvania law, is intended to be relied upon as legal advice or to create an attorney-client relationship. There is no guarantee that it is up to date or error free. It should be revised under the guidance of legal counsel to reflect the specific situation.

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# Commentary to the Model Declaration of Public Trust

## One Commentary

This commentary addresses all three model alternatives: the *basic form*, the *expanded form*, and the *declaration and grant of conservation easement*.

Commentary that pertains *exclusively* to the *declaration and grant of conservation easement* is presented in green. All other commentary is presented in black.

The commentary in black font sometimes uses the term “declaration” to refer to all three model documents so as to avoid repeated use of the awkward phrase “the basic form, the expanded form, and the declaration and grant.”

Unlike the headings of the expanded form and the declaration and grant, the headings of the basic form are unnumbered. However, the model alternatives share heading labels to the extent that they share content. Simply ignore the numbering when reviewing the basic form.

The commentary to the basic form ends just before §2.3 “Reservation” (except for the “Closing Matters” section found at the end of the commentary).

## General Instructions

**When in Doubt, Check the Commentary.** The purpose of each provision is explained and, sometimes, alternative approaches are described and optional provisions provided.

**Guides and Models.** Unless otherwise noted, all guides and model legal documents referenced in the commentary are published by WeConservePA and, thanks to WeConservePA’s donors, made available free-of-charge at the [WeConservePA.org](https://www.WeConservePA.org) library.

**Structure Tracks Models.** The models follow a simple outline structure, and the commentary follows the same pattern to make cross-referencing easy.

**Get Legal Counsel.** The models and this commentary should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The models must be revised to reflect the specific circumstances of the particular project. Any document drafted with assistance of these models should be completed with the guidance of legal counsel to ensure that the document accomplishes what is intended without unintended consequences.

**Disclaimer.** Once a document based on one of the models has been prepared or reviewed by an attorney licensed to practice law in the applicable state, you may delete the disclaimer at the bottom of the model that reads “Nothing contained in the model ...”

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

**Updates.** Check the [WeConservePA.org](http://WeConservePA.org) library periodically for updates to the models.

## Recording

**Is Recording of the Declaration Necessary?** Recording is necessary for the declaration to be fully effective. While an unrecorded declaration is better than no declaration, recording maximizes its utility and avoids various problems that can arise in the absence of recording. Recording ensures that a declaration will not be lost with time. A declaration that is only filed in a local government's business files is more likely to be forgotten and harder to find than one recorded in the real property records of the county. It's possible that the Declarant might someday seek to transfer responsibility for the Land to another unit of government or even a charitable conservation organization. Recording ensures that the transferee is informed during title investigation (if not before) that the Land is held in trust for the public. Any subsequent owner, by acceptance of the deed, accepts the responsibilities and limitations set forth in the declaration. Others using the Land (for example, a lessee granted the right to provide recreational facilities) also must abide by the terms of the recorded declaration.

**What About the Grant of Conservation Easement?** For the local government granting the easement, the grant of easement is binding upon the government once the document is signed and unconditionally delivered. Recording in the public records is necessary to establish the Holder's acceptance of the grant and make the grant binding upon future holders of the Land.

**Space for Recording Information.** The top of the first page of the models 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. (However, 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 models are 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; however, legal review is nevertheless important. 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.

## Title of Document

**Purpose.** The title informs readers of the public record that the document evidences the local government's dedication of the real property to public purposes.

The addition to the title “and Grant of Conservation Easement” informs readers that another party (the Holder) is granted an interest (the conservation easement) in the real property.

**Alternative Titles.** The document could instead be named “Declaration of Public Trust and Covenants,” “Declaration Dedicating Land to Public Purposes,” or “Declaration Dedicating Land to Public Purposes and Grant of Easement.”

**Abbreviation.** The document is referred to as “this declaration” throughout the text of the model or, if the grant of conservation easement is included, as “this declaration and grant.” When customizing the models, be careful to consistently use the appropriate term.

## Opening Recital

**Declarant.** The models identify the government making the declaration as the “Declarant.” You may substitute a more specific term such as “Township” or “County” but remember to make the substitution across the entire document.

**Declaration and Grant.** If the declaration and grant variation is used, a beneficiary of the conservation easement (the “Holder”) is also identified as a party.

**Qualifications to be a Holder.** Organizations can avoid many potential difficulties in upholding conservation restrictions on a property by ensuring that the grant of conservation easement conforms with the Conservation and Preservation Easements Act, Act of June 22, 2001 (P.L. 390, No. 29) (32 P.S. §§5051-5059). The Act limits conservation easement holders to (1) governmental entities and (2) charitable entities registered with the Bureau of Charitable Organizations that are exempt from taxation pursuant to 501(c)(3) of the Internal Revenue Code and that have purposes which include retaining or protecting the natural, scenic, agricultural or open space values of real property. (For more information, see the [Guide to the Conservation and Preservation Easements Act](#).)

**Acceptance of Easement.** The Holder joins in the declaration and grant to evidence its acceptance of the rights granted to it. Written acceptance is required by the Act (§4(c)) before the Holder may exercise the granted rights.

## 1. Background

**Purpose.** This section provides information necessary or desirable to help readers better understand the document and the background behind its development. It also describes the real property to be dedicated to public purposes. The models suggest possible content; you may choose to customize it to provide alternative or additional content. In any case, be sure to retain the descriptions and definition of the “Land.”

### 1.1 Land

**Land Subject to Declaration.** Section 1.1 [unnumbered in the basic form] identifies the real property (the “Land”) that is the subject of the declaration. It identifies the real property in two ways:

- **Parcel/Address Identification.** A brief identification is furnished as a convenient way to identify the real property but should not be relied upon as the sole means of identification.
- **Legal Description in Exhibit A.** A metes and bounds or other legally sufficient description of the open space is to be attached as exhibit A. This may be a deed description of an entire parcel or tract of land but also could be a description of a smaller area within a larger parcel or an area that encompasses portions of multiple parcels. For example, a municipality may want to dedicate a portion of a larger property for a playground, athletic fields, and other public recreation but want to set aside the remainder of the property for potential future development into a municipal administrative complex, public school, or other function inconsistent with a dedication for natural resource protection purposes.

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### OPTION: INCLUDE A GRAPHIC DEPICTION OF THE LAND

It may be constructive to include a plan, map, or survey of the Land in the declaration to graphically portray where the declaration (and its reservations and covenants if any) applies. A graphic depiction of the Land may be especially useful when (1) the declaration applies only to a portion of one or more larger parcels or (2) there are reservations or covenants that don't apply evenly across the Land. To incorporate a graphic depiction, you may modify this section, for example, as follows:

**Land.** The real property that is the subject of this declaration is identified briefly below and more fully described in exhibit A and depicted in exhibit B, each attached to and incorporated into this declaration (that property, the "Land").

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**Less than Entirety.** If a grant of conservation easement is to be included, the Conservation and Preservation Easements Act (§4(b)) requires that for an easement area that is less than the entire deed parcel, the description of the area must use (1) metes and bounds or (2) setbacks from deed boundaries or natural or artificial features.

## 1.2 Declarant

Some municipalities may wish to cite statutory authority for their role in providing open space benefits to the public. If this is desired, you may add additional text, such as the following:

Declarant is organized and existing under the Second Class Township Code, Act of May 1, 1933, P.L. 103, No. 69. As such, the declarant also qualifies as a "local government unit" as defined in the Act of January 19, 1968, P.L. 992, No. 442 (Act 442 for short, whose full title is "Preserving Land for Open Air Spaces"). Declarant is authorized to provide open space benefits to the citizens of the township as described in Section 2 of Act 442.

### 1.3 Constitution

Article 1, Section 27 of the Pennsylvania Constitution establishes a fiduciary duty on the part of the Commonwealth to conserve and maintain Pennsylvania's public natural resources for the people.<sup>1</sup> This applies both to state government and local governments.

### 1.4 Affirmation

This item explains that, in making the declaration, the Declarant is affirming the Land as a public natural resource as addressed in the Pennsylvania Constitution and dedicating or confirming the Land's dedication to the Public Purposes described in the "Dedication" section.

*This item is expanded to address the intent behind the grant of conservation easement if that model alternative is being used.*

### 1.5 Donated or Dedicated Property Act

In Pennsylvania, the ancient public trust doctrine has been codified by statute, often referred to as the Donated or Dedicated Property Act or DDPA.<sup>2</sup> The DDPA applies to all real estate interests donated to political subdivisions<sup>3</sup> for use as public facilities<sup>4</sup> or dedicated for public use, whether or not there is a formal record of the political subdivision's acceptance of the dedication.<sup>5</sup>

The DDPA provides that the donated or dedicated property must stay in trust—its original use must continue—unless the use "is no longer practicable or possible and has ceased to serve the public interest." If a local government believes this to be the case, it may apply to the county court of common pleas (in some counties the orphans' court) for relief.<sup>6</sup> Residents have the right to defend the public trust with the full weight of the Pennsylvania Constitution (Article 1, Section 27) backing the continuation of that public trust.

Many county and local municipal park properties are subject to restrictive covenants limiting use of the land to recreation and conservation purposes, the covenants having been imposed as a condition of the local government receiving state grant funds for acquisition and development of the land. The statutes authorizing these grants and requiring these restrictive covenants also establish mechanisms for the state to release the

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<sup>1</sup> See the Pennsylvania Supreme Court's ruling, [\*Pennsylvania Environmental Defense Foundation v. Commonwealth\*](#), No. 10 MAP 2015 (Pa. June 20, 2017), for an explanation of the public trust obligations placed on government in regard to public natural resources.

<sup>2</sup> Act of December 15, 1959 P.L. 1772, 53 P.S. §§3381-3386.

<sup>3</sup> A political subdivision commonly refers to a county, city, township, or other municipality having legislative powers.

<sup>4</sup> §1(3) of the DDPA states that: "'Public facility" shall mean without limitation any park, theatre, open air theatre, square, museum, library, concert hall, recreation facility or other public use.'

<sup>5</sup> *In re Erie Golf Course*, 605 Pa. 484, 992 A.2d 75 (2010).

<sup>6</sup> §4 of the DDPA.

restrictions. The question had existed as to whether the state's release of restrictions eliminated the need to follow the requirements and approval process set forth in the DDPA for removing land from the public trust. This question was answered in 2017, at least in regard to properties that benefited from grants under the Project 70 Land Acquisition and Borrowing Act. The Pennsylvania Supreme Court found that the Pennsylvania General Assembly's approval of the release of restrictions did not obviate the application of the DDPA.<sup>7</sup>

## 1.6 Rights and Remedies

This provision evidences that the declaration affords a means to preserve the public trust that does not diminish or block other rights and remedies available for upholding the Public Purposes.

To contest a proposed change in or termination of the public trust, one recourse is found in the procedures set forth in the DDPA; another recourse is to petition the court of common pleas to enforce the fiduciary duty of local government as trustee of the Land under the declaration.

The declaration stands as a bulwark against the uncertainties of the law: The DDPA may be repealed or amended in the future. Other statutes and judicial decisions may weaken the protections available for upholding the public purposes served by a dedication (or, conversely, furnish other remedies not presently available).<sup>8</sup>

Discussed below are several reasons for documenting a trust arrangement by means of a declaration.

**Formally Dedicates and Defines Public Purposes for DDPA.** The declaration serves to establish a key element required to enforce a public trust under the DDPA—that the Land has been, in fact, dedicated to public purposes.

**Provides Special Protections Accorded to Trusts.** The Commonwealth of Pennsylvania acting through the Office of the Attorney General and the state court system are authorized and obligated to assure that fiduciaries (such as trustees) furnish the highest level of care for trust assets. Use of trust assets for purposes other than specified trust purposes is forbidden unless approval of the Office of Attorney General and the court of common pleas is first obtained. One of the equitable principles used under the law to assure fidelity to trust purposes is known as *cy pres*: if the original trust purposes cannot be exactly followed the trust can be modified to a use as near as possible to the original.

*Example of Absence of Declaration.* A municipal property has been used solely for tennis courts for decades. To open the way for a sale of the property to raise cash for

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<sup>7</sup> See the Pennsylvania Supreme Court's opinion, decided June 20, 2017, in *Downingtown Borough (Friends of Kardon Park, Apts)* [J-125A-L-2016].

<sup>8</sup> The threat presented to parks and other public lands by potential changes in law should not be overstated. The Pennsylvania Constitution, as discussed elsewhere in this commentary, does provide a strong base level of protection. However, the full parameters of that protection are as yet not fully defined.

other purposes, the municipality, following the procedure set forth in the DDPA, petitions the court to remove the public trust claiming that the public's interest in tennis and use of the courts has dwindled; thus, it is no longer practicable or serves the public interest. Finding no evidence that the property was acquired for a public purpose other than tennis and further finding that public interest in tennis no longer exists, the court dissolves the public trust. The municipality sells the property for development. Per the DDPA, the sale proceeds must be applied to a public purpose, but that public purpose may be utterly unrelated to parks and open space.

*Same Example but with Declaration.* If instead, the municipality at some point had recorded a declaration dedicating the property to tennis court use, the outcome could be quite different: If the court makes the same finding that the tennis court use is no longer practicable, under fiduciary principles of trust law, the court must consider evidence under the *cy pres* rule of other potential uses of the property close to the intent of the original use; for example, outdoor basketball courts offer exercise in the fresh air and so do skate parks, playgrounds, and jogging tracks.

## 1.7 Holder

**Further Describe Holder.** If using the grant of conservation easement, you may further expand the description of the Holder. For example:

The Holder has standing under §5(a) of that act to commence, intervene in, or otherwise participate in any legal or equitable action affecting the Public Purposes described below.

**Find Possible Holders.** To identify organizations that are qualified to be holders under the Conservation and Preservation Easements Act and that work in a particular geographic area, use the [Find a Group](#) function at [WeConservePA.org](http://WeConservePA.org) or, outside Pennsylvania, [www.findalandtrust.org](http://www.findalandtrust.org).

## 1.8 Authorization to Grant Easement

Other sources of authority for a local government to grant a conservation easement may exist; the cited source is a prominent one.

## 1.9 Action

This item provides the date that the Declarant's governing body took action regarding the declaration (and grant).

# 2. Dedication

**Purpose.** In this section, the Declarant establishes a public trust (or confirms an already existing public trust). The section is intended to thwart any effort by a future governing body to (1) deny that the land was dedicated to particular public purposes or (2) shirk its duty to serve as trustee of the land in support of the public purposes. If the Declarant (or a successor owner) seeks to use or improve it for purposes other than the use for which it is dedicated, it is violating the public trust.

**Cannot be Broken Without Court Approval.** A public trust is a legal device that has been used for centuries to assure the public of the long-term benefit of publicly owned land. The public trust commits the trustee (the municipality or county) to exercise its rights and privileges for the benefit of the public for a described trust purpose. The public trust cannot be broken without court approval, and the public has the right to contest any attempt to violate the public trust. The Commonwealth of Pennsylvania, acting through the Office of the Attorney General, has the right to intervene in such action to protect the public interest in upholding public trusts.

## 2.1 Dedication to Public Purposes

**Purpose.** In this subsection, the Declarant dedicates the open space to particular public purposes.

### (a) To assure public access...

**Purpose.** This item establishes a public trust purpose of ensuring that the land is always available to the public for outdoor recreation. (The preservation of open space benefits provided for in the next item does not necessarily ensure that the public will have access to the land for permitted purposes on a continuous or regular basis.)

**No Access.** Access for public recreation may or may not be appropriate; for example, public recreation may not be appropriate on land that the local government intends to forever conserve as active farmland. In that case, you may delete this item.

**Public Safety and Welfare.** The local government always has an interest in maintaining order and protecting the health, safety, and welfare of users of the Land. If desired, the following phrase may be added to the end of this item to emphasize this interest: “subject to limitations on time, place, and manner of entry announced by Declarant from time to time.” Examples of such limitations might be limiting access to daylight hours, requiring pets to be leashed and controlled, and prohibiting access to assure safety in certain circumstances. (Users of the expanded form or declaration and grant may choose to address this concern in §4 “Clarifications.”)

**Not All Access Embodied in Trust.** Access, as a permanent public right embodied in the public trust, may be limited to certain types of recreational use or certain locations on the land; for example: “To assure public access for walking or jogging on designated public trails within the Land.” Such a limited level of access provided by the trust would not prevent the local government from providing greater public access (consistent with the purpose of providing open space benefits) at its discretion; rather, it only serves to establish the minimal level of access that must be provided.

**Placing Permanent Constraints on Access.** You may place constraints on the forms of outdoor recreation that are compatible with the public trust by detailing this in the purpose. If using the expanded model, section 2 “Covenants” also provides you an opportunity to limit or clarify the scope of permitted public access.

### (b) To assure open space benefits...

**Purpose.** This item specifies the public trust’s open space purposes: ensuring the continued and permanent open character of the land and the provision of open space

benefits to the public. The list of possible open space benefits draws heavily from the open space benefits described in the Pennsylvania statute “Preserving Land for Open Air Spaces.”<sup>9</sup> Section 2(1) of that act defines open space benefits as:

The benefits to the citizens of the Commonwealth and its local government units which result from the preservation or restriction of the use of selected predominantly undeveloped open spaces or areas, including but not limited to: (i) the protection and conservation of water resources and watersheds, by appropriate means, including but not limited to preserving the natural cover, preventing floods and soil erosion, protecting water quality and replenishing surface and ground water supplies; (ii) the protection and conservation of forests and land being used to produce timber crops; (iii) the protection and conservation of farmland; (iv) the protection of existing or planned park, recreation or conservation sites; (v) the protection and conservation of natural or scenic resources, including but not limited to soils, beaches, streams, flood plains, steep slopes or marshes; (vi) the protection of scenic areas for public visual enjoyment from public rights of way; (vii) the preservation of sites of historic, geologic or botanic interest; (viii) the promotion of sound, cohesive, and efficient land development by preserving open spaces between communities.

**Broad Scope of Open Space Benefits.** The definition of open space benefits is purposely broad to furnish the Declarant with discretion to make the Land available for a wide variety of uses so long as it remains predominantly undeveloped.

**Predominantly Undeveloped.** The phrasing “predominantly undeveloped” is intended to allow, on a very limited basis, construction of items supporting the public purpose of outdoor recreational use. If using the expanded model, you may elaborate on what development is and isn’t allowed in the covenants of §2.

**Narrower Scope of Open Space Benefits.** The Declarant may want to narrow the scope of open space benefits but should do so keeping in mind the advantage of a broad scope as described below.

**Broad Public Purposes Are Advantageous.** The models set forth a broad set of public purposes. The broadness provides for flexibility in use and management of the Land over time. It also increases the likelihood that the public will continue to enjoy access to the Land and the Land will continue to provide a variety of open space benefits even if the immediate use for which it was acquired becomes impracticable over time. The following examples illustrate the benefit of a broad scope of public purpose:

**Narrow Purpose:** The Land has been used solely as a public golf course for decades but no evidence exists of the public purpose in acquiring the Land other than its historic use. To accommodate a sale to a developer free of any public trust, the municipality (following the procedure set forth in the DDPA) petitions the court to remove the public trust claiming that the public’s interest in golfing and use of the golf course has dwindled; thus, it is no longer practicable or serves the public

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<sup>9</sup> Act of Jan. 19, (1968) 1967, P.L. 992, No.442.

interest. The court rejects evidence of other potential public uses and benefits (public park with trails, playground facilities, absorption of stormwater to mitigate flooding, etc.) for the Land and dissolves the public trust. The Land is sold for development.

**Broader Purpose:** Upon acquiring the Land, the municipality recorded a declaration identifying the public purposes as public golf course, park, and other open space uses providing opportunities for healthful outdoor recreation for the benefit of the public. Then, given the same dwindling golf course use situation, the golf course use will not be the only public purpose to be examined by the court under the DDPA procedure. Representatives of the public may now assert evidence of other healthful outdoor recreational uses that are practicable and serve the public interest.

## 2.2 Duty

**Purpose.** The law imposes on the owner of public trust property the duty to care for the property and preserve it for the use and benefit of the public. This provision, though not strictly necessary, makes clear that the Declarant understands that the Land has been entrusted to its care and accepts its obligation to act with the highest degree of faithfulness required of a trustee for the benefit of the public.

**All the provisions addressed from this point forward are found only in the expanded form or the declaration and grant.**

## 2.3 Reservation

**Purpose.** Once real property is placed in the public trust, the property may only be used for the purposes of the trust. Private uses, excepting those that are incidental to supporting the public trust purposes, are prohibited. Also prohibited are government uses not covered by the trust purposes (e.g., storage of road maintenance equipment). This provision provides the Declarant the option to hold certain property interests outside of the public trust so that the Declarant is at liberty to use or transfer those interests if it so chooses at a later date.

**Reservation Needed?** The model reserves to the Declarant the right to install or allow for the installation of underground improvements not related to the trust purposes. If there isn't a desire to reserve this or other property interests, this provision may be deleted.

# 3. Covenants

**Purpose.** This section provides a set of rules to guide the administration of the Land consistent with the Public Purposes. In it, those activities, uses, facilities, and improvements that are understood to be consistent with the Public Purposes are identified. Its inclusion and the detail it provides are not necessary to accomplish the establishment of the public trust but can serve to prevent disputes as to interpretation.

**Dispute Avoidance.** In customizing the covenants, a helpful practice is to review the public purposes described in §2 from the points of view of potential future administrators

of the Land, including one who will push for the widest possible interpretation of public uses of the Land and another who will seek to interpret the public purposes so narrowly that the public benefit could be seen as impracticable or infeasible (which may be used as an argument to void the dedication). Then use the covenants (and the Clarifications section below) as a tool to assure that the intent of the declaration will not be defeated by clever interpretations of the Public Purposes.

### 3.1 Prohibited

**Purpose.** This subsection sets forth a blanket prohibition on improvements, facilities, activities, and uses. The next subsection then sets forth all the many exceptions to this prohibition. This arrangement allows for maximum transparency in presenting what is allowed within the scope of the public trust.

### 3.2 Permitted

**Items Serve as Examples.** The items listed in the model are illustrative; they serve as examples of what may need to be specifically addressed as permitted to avoid ambiguity and misinterpretation. To aid understanding, the items listed in (a) are all *improvements or facilities*; the items listed in (b), (c), (d), and (e), in contrast, only address *activities and uses* (including those activities and uses associated with the permitted improvements and facilities).

**Broad Permissions.** While the covenants begin with a blanket prohibition, the subsequent list of permitted items is written to be broad and inclusive so as to not to be unduly restrictive.

## 4. Clarifications

**Purpose.** This section provides the Declarant (and, in the declaration and grant model, the Holder) an opportunity to clarify matters for which there may be uncertainty or concerns regarding appropriate interpretation at the time of the declaration or at some future time.

**Controlling Access and Leasing and Licensing.** Subsections 4.1 and 4.2 address matters where a local government may want absolute certainty that it has discretion. These clarifications might be reasonably inferred but are included in the model to eliminate any doubt. You may choose to delete them. Conversely, you may use the section to address additional matters that a governing board wants to clarify.

**Assuring Access.** A government's management of a park or other public open space may seek to provide the public with abundant outdoor recreational opportunities but entail some obstacles to absolutely unhindered use, e.g., a modest fee for using a public golf course or swimming pool. Subsection 4.3 clarifies that while some charges and other barriers to untrammelled access may be established, these obstacles must be limited.

## 5. Grant of Conservation Easement

### 5.1 Grant of Conservation Easement

**Purpose.** This section only exists in the declaration and grant model. With it, the Declarant grants a conservation easement to the Holder. The grant empowers the Holder to act to preserve the identified public purposes if the Declarant fails to comply with the declaration. The grant adds another layer of support for the public purposes. It addresses the uncertainty as to whether a group of citizens will be ready, willing, and able to quickly organize themselves to block an attempted disposal of the Land for private development or use for other non-public purposes if such a threat to the public purposes should arise.

**Consultation.** A Holder can provide a sounding board to a governing body as it grapples with questions regarding the administration of the public trust property over the years.

**Block Uses.** The grant of easement empowers the Holder to block uses of the Land that are inconsistent with the public purposes and the covenants.

**Inspect.** The grant of easement provides the Holder the affirmative right of enter the Land for inspection purposes. Holders of conservation easements must always have a right of entry for these purposes. If desired, prior notice of entry may be required by adding to the end of the existing provision:

upon not less than \_\_\_\_ days prior notice to the Declarant except that no notice is required if the Holder has reason to suspect that a violation of this declaration has occurred or is about to occur.

**Additional Easement Provisions.** It is possible to greatly elaborate on the administrative terms of the conservation easement. For examples, see the [Model Grant of Conservation Easement and Declaration of Covenants](#).

### 5.2 Relationship of Grant to Dedication

**Purpose.** The grant of conservation easement is intended to complement rather than supersede rights of the public to defend the public trust and its Public Purposes. This section makes this intent clear.

### 5.3 Coal Notice

**Purpose.** The model includes this notice to satisfy the requirements of §9(d) of the [Conservation and Preservation Easements Act](#). The Act requires the notice to be in at least 12-point type and be preceded by the word “Notice” in at least 24-point type.

See “Statutory Notice of Potential Impairment of Coal Mining” in the [Guide to the Conservation and Preservation Easements Act: Pennsylvania Act 29 of 2001](#) for more information regarding Pennsylvania’s coal notice requirement.

**Coal Distribution.** The Pennsylvania Department of Conservation and Natural Resources publishes a map of the [Distribution of Pennsylvania Coals](#).

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## OPTION: INCLUDE A RIGHT OF ENTRY FOR RESOURCE MANAGEMENT

### Right of Entry for Resource Management [optional provision]

As part of the grant of conservation easement, the Declarant may want to provide the Holder the right to engage in resource management activities on the Land to enhance one or more open space benefits, for example, improving wildlife habitat or reducing erosion and sedimentation. A subsection 5.4 could be drafted to permit entry for those purposes. For example:

**Natural Resource Management.** The Holder may, at its election, engage in natural resource management activities on the Land consistent with the Public Purposes in order to improve wildlife habitat and minimize erosion and sedimentation.

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## Closing Matters

**Closing.** When a person making a promise gets nothing of value in return—receives no *consideration*—the law may not require the promise to be kept. The phrase *intending to be legally bound* is a valid substitute for consideration in the Commonwealth of Pennsylvania (but not necessarily other states).

**Signature Lines.** Space has been provided for one person to sign on behalf of the Declarant. More than one signature may be required depending upon the governance rules of the local government.

**Witness/Attest.** If desired or required by the governance rules of the local government, additional signature lines may be added to evidence that the secretary or assistant secretary attests to the validity of the document.

**Acknowledgment.** The date of the acknowledgment should not be earlier than the date of the declaration.

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## OPTION: ADD VARIOUS MISCELLANEOUS PROVISIONS

### Miscellaneous [optional provisions]

**Purpose.** You may wish to incorporate additional material into the declaration. A new “Miscellaneous” section (numbered “5” for the expanded form or “6” for the declaration and grant) could be established for this purpose. Examples of potential content are provided under the following three subsection titles:

- Burdens; Benefits
- Entire Agreement
- Frustration of Purpose

#### Burdens; Benefits

**Purpose.** This provision evidences that the declaration is binding upon anyone who owns or holds an interest in the Land from and after the recording date and that the benefit of

the covenants runs to the general public. It is arguably redundant—the Declarant having clearly stated in the models its dedication of the Land to Public Purposes in perpetuity—but some may question its absence since it is often found in documents.

Sample Provision:

This declaration is binding upon the declarant and its successors and assigns as a covenant running with the land and runs to the benefit of the public.

*Variation.* The reference to the public may be narrowed. If desired, replace “public” with “citizens of \_\_\_\_ township.”

If a declaration and grant, add to the end:

The benefit of this declaration also runs to the Holder and any transferee or assignee who is eligible to be a holder of conservation easements under applicable law.

*Variation.* If the Declarant wants the discretion to control a potential future transfer of the easement by the Holder to another entity, add to the end of the entire provision: “No transfer or assignment of the Holder’s rights under this declaration is permitted without the prior written approval of the Declarant.”

## Entire Agreement

**Purpose.** This provision serves to negate any written or oral evidence outside the signed and recorded document as evidence of the scope and meaning of the declaration. This clarification may be especially useful in circumstances in which the existence of the public trust or its purposes has been the subject of debate. The provision establishes that, no matter what has been said or published before, the Declarant intends the declaration to be the last word on the subject.

Sample Provision:

**Entire Agreement.** This declaration sets forth the entire commitment of the Declarant pertaining to the dedicated use of the Land for Public Purposes.

Sample Provision for Declaration and Grant:

The terms of this declaration and grant supersede in full all statements and writings between Declarant, Holder, and others pertaining to the subject matter of this declaration and grant.

## Frustration of Purpose

**Purpose.** This provision evidences the intent of the Declarant (and, if the declaration and grant is used, the Holder) to forego any legal action that would release the Land from the public trust created by the declaration. If the declaration (not declaration and grant) is used, delete references to Holder.

Sample Provision:

Neither the Declarant nor the Holder shall commence or acquiesce in the commencement of any legal or equitable action to release the Land from the

dedication to Public Purposes set forth in this declaration. This prohibition includes any request for a court of competent jurisdiction to:

- a) avoid, limit, or diminish in any way the public trust imposed on the Land for any reason including any allegation that use for Public Purposes is no longer practicable or possible or that it has ceased to serve the public interest; or
  - b) obtain such relief as may be available pursuant to court decisions or legislation including remedies available to a political subdivision under the Act entitled "Property Donated to Political Subdivisions for Public Use" (Act of Dec. 15, 1959, P.L. 1772, No. 670) or any future amendment or replacement of such Act in whole or in part.
-