

# Model Grant of Trail Easement and Commentary

A Short Form Alternative to the Model Trail Easement Agreement

*Prepared by the*  
Pennsylvania Land Trust Association

*with support from the*

William Penn Foundation



*and the*

Pennsylvania Department of Conservation and  
Natural Resources Bureau of Recreation and  
Conservation “Growing Greener” Program



*Find the most recent edition of this document as well as other models  
and guidance at [ConserveLand.org](http://ConserveLand.org) and [ConservationTools.org](http://ConservationTools.org).*



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## Introduction

### *An Alternative*

The *Model Grant of Trail Easement and Commentary* (the "Short Form") is provided as an alternative to the [Model Trail Easement Agreement and Commentary](#) for use where a simple grant of access is desired and neither the landowners (the "Owners") nor the future easement holder (the "Holder") desire to raise and address issues that often arise when two entities hold concurrent interests in the same real estate.

### *Only Advantage is Brevity*

The only advantage to either Owners or Holder in using the Short Form is brevity. Before deciding to use the Short Form, Owners and Holder should understand the issues that are *not* addressed in the Short Form and the potential consequences of omitting that material.

### *Critical Reading*

Besides consulting with legal counsel, Owners and Holder should read the [commentary to the Model Trail Easement Agreement](#) as well as [Trail Easements](#) (the "Trail Easement Guide") so as to be aware of the various issues that are not addressed and provisions that are not included in the Short Form. The Pennsylvania Land Trust Association publishes these pieces at [ConservationTools.org](#). The [Trail Easement Guide](#) addresses practical and legal issues common to trail easements and explains how these issues are addressed in the model documents posted at [ConserveLand.org](#) and [ConservationTools.org](#).

### *Pare Down Trail Easement Agreement Rather than Expand Short Form*

If Owners or Holder decide that the Short Form does not address all of the issues that they want to address, then use the Model

Trail Easement Agreement and, if brevity remains a paramount consideration, selectively delete material that Owners and Holder have decided is unnecessary for their purposes.

## State or Federal Funding

Pennsylvanians intending to pursue state or federal funding for the purchase of an easement or for subsequent trail development should consult with the PA Department of Conservation and Natural Resources before using this model instead of the preferred [Model Trail Easement Agreement](#).

## Comments Requested

The Pennsylvania Land Trust Association welcomes suggestions for improvement of its models and expansion of the models' respective commentaries to further the goals of clarity, flexibility and effectiveness.

Please suggest optional and alternative provisions and other improvements as well as issues in need of further investigation. Comments may be directed to Andy Loza at [aloza@conserveland.org](mailto:aloza@conserveland.org).

## Acknowledgements

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## COMMENTARY

### to the Pennsylvania Land Trust Association's MODEL GRANT OF TRAIL EASEMENT

#### General Instructions

- **Read the Commentary.** Users of the model are encouraged to read through the commentary at least once. The purpose of each Section is explained and, oftentimes, variations are provided to address alternatives that may be useful in particular situations.
- **Numbered Paragraphs.** The commentary follows the numbered paragraphs in the model to make cross-referencing easy. Titles or captions in bold lettering preceded by numbers refer to sections of the same title in the model. Bullets preceding text indicate a comment. Text without bullets varies with the context, covering alternative or optional text as well as excerpts from other documents.
- **Get Legal Counsel.** The model and this commentary should not be construed or relied upon as legal advice or legal opinion on any specific facts or circumstances. The model must be revised to reflect the specific circumstances of the particular project under the guidance of legal counsel.
- **Best Practices.** Any organization considering acquiring land or easements for recreational purposes should be aware of the guidelines contained in [Land Trust Standards and Practices](#) (referred to in this commentary as “S&P”). Last updated by the Land Trust Alliance in 2004, these voluntary standards and practices draw on the decades of experiences and lessons learned by organizations across the country. *Standard 9, Practice A* calls for land trusts to obtain legal review of every land and easement transaction, appropriate to its complexity, by an attorney experienced in real estate law.
- **Disclaimer Box.** Once a document based on the model has been prepared or reviewed on behalf of the Holder by an attorney licensed to practice law in the applicable state, the box following the signature area that begins “The model on which this document is based should not be construed or relied upon as legal advice ...” may be deleted.
- **Other States.** Users outside of Pennsylvania need to take care to modify the model to account for differences in state laws.
- **Updates.** Check [ConserveLand.org](#) or [ConservationTools.org](#) periodically for updates to the model.

#### Preliminary Matters

##### Margins

- Several counties require a minimum 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. Many counties require type size not less than 10-point. The model has been formatted to conform to these requirements.

##### Recording Office Information

- There is a trend for County recording offices to require information identifying the preparer (including both address and telephone number), the name and address of the person to whom the document is to be returned, and the tax parcels of the real estate to which the document pertains. The model is formatted to conform to these requirements. If 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.
- Pennsylvania law does not require that a lawyer or law firm be identified as the preparer of the document; however, legal review is required for conformance with S&P. See note “Get Legal Counsel” above. Users

should 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. It is legally and ethically improper to represent to the public that a legal document, survey plan or architectural drawing is the work product of a professional if it has been changed without the knowledge or consent of that professional.

### Opening Recital

- **Purpose.** The purpose of the opening recital is to identify the parties to the Easement and the effective date of the document.

### Date

- The date can be added in hand writing 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), substitute for “dated as of \_\_\_\_”: “signed \_\_\_\_\_ but delivered \_\_\_\_\_”. The date of delivery is the effective date of the document.

### Owners

- Insert names exactly as set forth in the deed by which the present Owners acquired the Property. If there has been a change (for example, by death) in the ownership from the names on the deed into the Owners, it is good practice to recite the off-record facts to clear up the apparent gap in title at the end of the legal description attached as Exhibit “A”.
- All Owners must join in the Easement to be effective under applicable law.
- The relationship of multiple Owners to each other may be added here but is not necessary for recording or other purposes. Example: X and Y, husband and wife or X and Y, as joint tenants with rights of survivorship.
- If a Person other than an individual is entering the Easement, a phrase identifying the type of entity and state in which the entity was created is desirable but not necessary for recording or other purposes. Example: X, a Pennsylvania limited partnership.

### Holder

- The full legal name of the Holder (including Inc. or Incorporated if part of the legal name) should be inserted in the blank.
- 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 non-profit corporation.
- 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 vesting title in the undersigned Owner or Owners.
- 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 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 town 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 both counties.

- **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).

## 1. Trail Easement

- **Purpose.** The purpose of this Section is to operate as a grant of easement from Owners to Holder over the portion of the Property identified as the trail location in the plan attached as Exhibit "B".
- **Easement Plan.** Attachment of an Easement Plan is optional. If no Easement Plan is attached, the location of the trail will be established by Holder. *See*, "Easement Location" in the [Trail Easement Guide](#) for a discussion of the importance of locating the area subject to the easement.
- **Easement Purpose.** Besides the grant of easement to create the trail and make it available to the public, the Easement includes the right to install signage pertaining to the trail. *See*, "Easement Purpose" in the [Trail Easement Guide](#) for a discussion of the importance of defining the scope of the easement.
- **No Direct Grant to Public.** As in the Trail Easement Agreement, the grant of easement is to Holder *not* to the public. The Holder may be constrained by grant agreements and the like to make the trail available to the public but the wording of the grant has been purposefully chosen to avoid the application of the public trust doctrine and other legal principles that may put the Holder in the position of acting as a fiduciary or trustee for the benefit of the public.

## 2. Public Enters at Own Risk

- **Purpose.** The Easement does not expressly burden either Owners or Holder with responsibility for the safety of the public using the Trail. The purpose of this Section is to disavow any implied duties to the general public to inspect, repair, or warn against possibly unsafe conditions. This does not mean that Owners or Holder should not try to act responsibly; its only purpose is to warn anyone relying upon this Easement for rights of entry that they must take responsibility for their own safety.
- **Statutory Immunity.** For a summary of the [Recreational Use of Land and Water Act](#) and other protections available under Pennsylvania law, *see* [Reducing Liability Associated with Outdoor Recreation](#) at [ConservationTools.org](#).

## 3. Recorded Document

- **Recording.** Recording in the public land records of the county in which the Property is located is necessary to make the covenants binding upon future owners who do not otherwise know about the terms of the Easement but the grant is complete once the document is signed and unconditionally delivered.
- **Perpetually Binding.** The term of the Easement is indefinite. Owners are bound forever unless a termination occurs either by election of Holder or by a court adjudication that, due to non-use for an extensive period of time, the Easement has been abandoned.

## 4. Exhibits

- **Purpose.** The purpose of this paragraph is to incorporate into the text of the legal document both the metes and bounds description of the Property and the Easement Plan, if any.

## 5. Entire Agreement

- **Conservation Easement.** If Owners are delivering this Easement in connection with a donation, sale or bargain-sale of a Conservation Easement, add the following to the beginning of the section:

*This Easement has been executed and delivered in connection with a Conservation Easement (the "Conservation Easement") dated the same date as this Easement between the Owners and [the Holder or, if not the Holder under this Easement, identify that entity]. The Conservation Easement is intended to be recorded prior to this Easement and the rights of Owners and Holder under this Easement must*

*be exercised under and subject to applicable restrictions contained in the Conservation Easement. Article V of the Conservation Easement incorporates this Easement 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 the Holder identified above in this Easement, the rights of Holder to enforce this Easement may be exercised by the holder of the Conservation Easement and any Beneficiaries (as defined in the Conservation Easement)*

- **Off-Record Document.** The [Trail Easement Guide](#) and [Reducing Liability Associated with Outdoor Recreation](#) suggest circumstances in which Owners and Holder may want to have a written understanding between themselves but not part of the publicly recorded document so as not to incentivize claims by persons allegedly injured while using the Trail. These off-record agreements should be mentioned here as not being superseded by the terms of this grant of easement.

## 6. Defense of Claims

- **Purpose.** This paragraph is intended to give Owners comfort that, should the defense of immunity under the Recreational Use of Land and Water Act described in ¶3 above not be sufficient to quash a civil action for an alleged injury to a trail user, then Holder, either directly or through its insurer, will engage legal counsel to defend the civil action for both itself and the Owners. Should Owners or Holder be found legally responsible for the unsafe condition then it is the obligation of Holders to pay the claim.
- **Owners' Responsibility.** There is one exception to the general rule stated above: Owners must abide by the requirements for immunity that have developed with respect to the [Recreational Use of Land and Water Act](#). One of these requirements is provided in the Act itself: No charge may be imposed for the recreational use of the property. Another requirement for immunity has developed by court decisions: the area available for recreational use must remain [relatively undeveloped](#).
- **Owner's Fault.** The Owners are responsible only for injury or damage caused by unsafe conditions that the Owners create. Claims for injuries caused by unsafe conditions -- icing, slippery leaves, steep rocky slopes -- that occur naturally are, by agreement of Owner and Holder, the responsibility of Holder to the extent immunity is not available.

### Optional Additions from the [Model Trail Easement Agreement](#)

- **Consideration.** If the Trail Easement is the subject of a purchase and sale transaction, perhaps with an accompanying Conservation Easement, insert a provision evidencing consideration as discussed in §1.04 of the commentary to the [Model Trail Easement Agreement](#).
- **Federal Tax Items.** If the Trail Easement is donated, in whole or in part, and otherwise meets the requirements of a Qualified Conservation Contribution under IRC 170(h), a supplemental provision as discussed in §1.05 of the commentary to the [Model Trail Easement Agreement](#) may be added to the Short Form.

## Closing Matters

- **Closing:** The phrase “INTENDING TO BE LEGALLY BOUND” is especially important where there is no consideration being given for the donation because the phrase is a valid substitute for consideration in the Commonwealth of Pennsylvania. The term “consideration” means something of value given in return for a promise.
- **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.
- **Signature lines.** Add as many signature lines as are necessary to accommodate the number of Owners who will be signing the Easement. It is good practice to sign in black ink rather than blue ink so that signatures are legible on microfilm or microfiche. Holder does not sign the Short Form so no acknowledgment is necessary.

- **Acknowledgment.** The date of the acknowledgment should not be earlier than the date of the Easement. *See* Commentary to opening recitals of Easement.
- **Exhibits.** Check that all exhibits and schedules referenced in the Easement are attached before it is signed and recorded in the Public Records.

Disclaimer Required by IRS Rules of Practice

Any discussion of tax matters contained in this message is not intended or written to be used and cannot be used for the purpose of avoiding any penalties that may be imposed under Federal tax laws.