

## Outline of a Typical Conservation Easement

- \* Parties
  - Grantor (landowner(s)) and Grantee (easement holder and any co-holder)
- \* Date of Conveyance
- \* Article I: Background and Easement Objectives
  - Legal description of property
  - Reference to attachments and baseline documentation
  - Qualifications (state and federal) of grantee to hold easement
  - Compliance with Conservation & Preservation Easements Act
  - Easement objectives and conservation values to be protected
  - Grant of easement in perpetuity
- \* Article II: Restrictions (this is the heavily negotiated “heart” of the easement document)
  - Subdivision (also specify whether multiple parcels that comprise the eased property may be conveyed separately)
  - Prohibited land uses
    - Three methods of defining prohibited land uses:
      - Exclusive: any land use not expressly prohibited is permitted
      - Unreserved: any land use not expressly reserved is prohibited
      - Inconsistent: any land use inconsistent is prohibited
    - Should also prohibit commercial recreational use that is more than “de minimus” in order to qualify for federal estate tax benefit
  - Permitted construction
    - Modification/replacement of existing improvements (may specify % increase allowed)
    - New construction (may specify building envelopes)
  - Resource protection methods
  - Dumping not allowed
  - Density limitations (not allowing eased property to be included with other, non-eased property for purposes of development density calculations)
  - Subsequent transfers (future deeds must reference easement; owner must notify easement holder upon property’s transfer)
- \* Article III: Rights of Grantee and Grantor
  - Grantee’s right of access to inspect property
  - Access by public (typically not allowed)
  - Reserved rights of grantor
  - Notice to grantee (where required in Article II)
  - Prior review and approval by grantee (where required in Article II; for instance, before grantor may exercise specified reserved rights, such as new construction)
  - Approval procedure and time periods
  - Violation
    - Notice; cure period
    - Remedies
    - Availability of equitable relief
    - Cumulative remedies
    - Acts beyond grantor’s control
  - Reimbursement obligations on part of grantor
  - Maintenance, taxes, etc., not grantee’s responsibility
  - Estoppel certificate (upon request, grantor will issue letter certifying that

landowner is in compliance with easement)

- \* Article IV: General Provisions
  - No waiver due to inaction by grantee
  - Indemnification by grantee of grantor
  - Distribution of condemnation proceeds
  - Extinguishment of easement by court
  - Grantor's representations and warranties
    - Sole owner
    - No liens/encumbrances (or mortgage subordinated)
    - Payment before delinquency of charges that may become liens superior in priority to easement
    - Possession/leases
    - Compliance with laws; criminal/civil investigations
    - Hazardous material
  - Successor to grantee
  - Delivery of notices
  - Incorporation by reference of other documents into easement
  - Separate counsel retained by grantor
  - Accuracy of baseline documentation (required by IRS)
  - Interpretation in favor of grant of easement
  - Severability of invalid easement provisions
  - Entire agreement
  - Doctrine of changed circumstances not applicable
  - Amendment (if mutually agreed upon, certain provisions may be modified in the future as long as original intent is achieved)
  - Termination of rights and obligations upon transfer
  - Counterparts
  - Captions
  - Pennsylvania coal notice (required for properties containing workable coal seams)
- \* Article V: Other Definitions
- \* Signatures and Acknowledgments (must be notarized and recorded)
- \* Exhibits
  - may include legal description; detailed summary of property's conservation values; and conservation plan for property, illustrating any building envelopes