

- (a) planting of native vegetation (i.e. trees, shrubs, grasses, and forbs); and
- (b) restoring, altering or maintaining the topography, hydrology, drainage, structural integrity, streambed(s), streambank(s), water quantity, water quality, any relevant feature of a stream, wetland, water body, or vegetative buffer within the Conservation Area.

(3) The Grantor, the Sponsor, the Corps and other government agencies with appropriate legal authority shall each have the right to enforce the terms of this Declaration by appropriate legal proceedings [for government entities, use PA Statutes, Title 32, §§ 5051-5059.] in accordance with applicable law so as to prevent any activity on or use of the Property that is inconsistent with the purposes of this Declaration and to require the restoration of such areas or features of the Conservation Area that may be impaired or damaged by an inconsistent activity or use.

C. DURATION

This Declaration shall remain in effect in perpetuity, shall run with the land regardless of ownership or use, and is binding upon and shall inure to the benefit of the Grantor's heirs, executors, administrators, successors, representatives, devisees, and assigns, as the case may be, as long as said party shall have any interest in any portion(s) of the Conservation Area.

D. PERMITTED USES

This Declaration will not prevent the Grantor, or any subsequent owner of the Property and/or portions of the Property, from making use of the area(s) outside of the Conservation Area or from uses that are consistent with the purposes of this Declaration.

E. RESTRICTIONS

Any activity in or use of the Conservation Area that is inconsistent with the purposes of this Declaration by the Grantor; subsequent property owner(s); and the personal representatives, heirs, successors, and assigns of either the Grantor or subsequent property owner(s), is prohibited. Without limiting the generality of the foregoing, and except when an approved purpose under B.(2) above, or as necessary to accomplish mitigation approved under the any permit(s) reliant upon this Declaration, the following activities and uses are expressly prohibited in, on, over, or under the Conservation Area, subject to the express terms and conditions below:

(1) **Structures.** The construction of man-made structures including, but not limited to, the construction, removal, placement, preservation, maintenance or alteration of any buildings, roads, utility lines, billboards, or other advertising. This restriction does not include deer stands, bat boxes, bird nesting boxes, bird feeders, duck blinds, and the placement of signs for safety purposes or boundary demarcation.

(2) **Demolition.** The demolition of fencing structures constructed by the Sponsor for the purpose of demarcation of the Conservation Area or for public safety.

(3) **Soils.** The removal, excavation, disturbance, or dredging of soil, sand, peat, gravel, or aggregate material of any kind; or any change in the topography of the land, including any discharges of dredged or fill material, ditching, extraction, drilling, driving of piles, mining or excavation of any kind.

(4) **Drainage.** The drainage or disturbance of any aquifer, the surface water level or the water table, except for pre-existing or approved project-related stormwater discharges and any maintenance associated with those stormwater discharges. All pre-existing or approved project-related drainage/stormwater discharge features should be shown on the accompanying plat map or approved plan and attached to this Declaration as Exhibit B.

(5) **Waste or Debris.** The storage, dumping, depositing, abandoning, discharging, or releasing of any gaseous, liquid, solid, or hazardous waste substance, materials or debris of whatever nature on, in, over, or underground or into surface or ground water, except for pre-existing or approved project related stormwater discharges, and any maintenance associated with those stormwater discharges.

(6) **Non-Native Species.** The planting or introduction of non-native or invasive species.

(7) **Herbicides, Insecticides, and Pesticides.** The use of herbicides, insecticides, pesticides, or other chemicals, except for as may be necessary to control invasive species that threaten the natural character of the Conservation Area. State-approved municipal application programs necessary to protect public health and welfare are not included in this prohibition.

(8) **Removal of Vegetation.** The mowing, cutting, pruning, removal; disturbance, destruction, or collection of any trees, shrubs, or other vegetation, except for pruning, cutting or removal for:

- a) safety; or
- b) control in accordance with accepted scientific forestry management practices for diseased or dead vegetation; or
- c) control of non-native species and noxious weeds; or
- d) scientific nature study.

(9) **Agricultural Activities.** Unless currently used for agricultural or similarly related purposes, the conversion of, or expansion into, any portion of the Conservation Area for use of agricultural, horticultural, aquacultural, silvicultural, livestock production or grazing activities. This prohibition also includes conversion from one type of these activities to another (e.g. from agricultural to silvicultural).

[NOTE: The following language should be added, as appropriate for projects in designated bog turtle counties: Corps approved management practices, including the introduction of livestock, for the purpose of maintaining bog turtle habitat, are not included in this prohibition.]

(10) **Subdivision of Conservation Area.** Subdivision of real property within the Conservation Area into multiple parcels.

(11) **Other.** Other acts, uses, excavation, or discharges, which adversely affect fish or wildlife habitat or the preservation of lands, waterways, or other aquatic resources mentioned herein within the Conservation Area.

F. INSPECTION, ENFORCEMENT AND ACCESS RIGHTS

As set forth in Section B, above, the Grantor, Sponsor, Corps, PADEP, and authorized regulatory entities have the right to enter the Property to observe the Conservation Area and to take actions necessary to verify compliance with and to enforce this Declaration. When practicable, such entry shall be upon prior reasonable notice to the property owner. The grantor grants to the Corps, the U.S. Department of Justice, and/or the PADEP, a discretionary right to enforce this Declaration in a judicial action against any person(s) or other entity(ies) violating or attempting to violate these restrictive covenants. No violation of this Declaration shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing agency shall be entitled to a complete restoration for any violation, as well as other judicial remedies such as civil penalties. Nothing herein shall be interpreted to limit the right of the Corps or PADEP to modify, suspend, or revoke any permit issued or authorized by the Corps or PADEP.

G. RECORDING AND EXECUTION BY PARTIES

Within thirty (30) calendar days of execution of this Agreement, the Grantor shall record this Declaration in the _____ County office where land records are retained. Further, if anticipated activities in the Conservation Area are agreed upon for future phases of the site, as set forth in Section I (Reserved Rights) herein, the Grantor or Sponsor must submit plans to the Corps and PADEP for review and approval prior to any work in the Conservation Area.

H. NOTICE OF TRANSFER OF PROPERTY INTERESTS

No transfer of the rights set forth in this Declaration, or of any other property interests pertaining to the Conservation Area or the underlying property it occupies, shall occur without sixty (60) calendar days' prior written notice to the Sponsor, Corps and PADEP.

I. RESERVED RIGHTS

(1) The Grantor and any holders of declarations or other property rights for the operation and maintenance of pre-existing or project-related structures or infrastructure such as roads, utilities, drainage ditches, or stormwater facilities that are present on, over, or under the Conservation Area reserve the right, within the terms and conditions of their permits, their agreements, and the law, to continue with such operation and maintenance. All pre-existing or approved project-related structures or infrastructure, if any, shall be shown on the accompanying plat map or approved plan and attached to this Declaration as Exhibit B.

(2) If an authorized project requires any related or unanticipated infrastructure modifications, utility relocation, drainage ditches, or stormwater controls within the identified Conservation Area, or if a situation requires measures to remove threat to life or property within the identified Conservation Area, said activities must be approved in writing by the Corps and PADEP subject to terms and conditions set forth in the written approval. Approval is subject to the Corps and PADEP discretion. If approved, said activities must be identified on an amended Exhibit B and must be recorded and specifically noted as an “amendment” and copies of the recorded Amended Exhibit B must be provided to the Corps and PADEP within sixty (60) days of Corps approval. Approval of said activity by the Corps is in addition to any Clean Water Act, Section 404 permit, or other authorization, which may be required in order to legally implement said activity. The Grantor and FPR accept the obligation to place any other and/or subsequent responsible party on reasonable prior notice of their need to request such Corps approval.

J. SEVERABILITY

If any portion of this Declaration, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

K. MODIFICATIONS

The restrictions contained in this Declaration are required by the Department of the Army Permit and/or Mitigation Banking Instrument and /or Mitigation Plan, a copy of which is attached hereto and incorporated by reference. There shall be no changes or alterations to the provisions in this Declaration without prior written approval from the appropriate District Commander of the Corps and PADEP. The Corps and PADEP shall be provided with a 60-day advance written notice of any legal action concerning this Declaration or of any action to extinguish, void, or modify this Declaration in whole or in part, including transfer of title to, or establishment of any other legal claims over, the Property. This Declaration is intended to survive foreclosure, bankruptcy, condemnation, or judgments affecting the Property.

L. MITIGATION

If the work required by a mitigation plan, including maintenance or remedial work, under the Corps permit for the project, occurs within the Conservation Area, then the Sponsor is allowed to construct and undertake the mitigation work in accordance with an authorized mitigation plan, a copy of which is attached hereto and incorporated by reference.

M. COAL RIGHTS NOTICE

The following notice is given to and accepted by Grantor for the purpose and with the intention of compliance with the requirements of the Pennsylvania Conservation and Preservation Declarations Act. Nothing herein shall imply the presence or absence of workable coal seams or the severance of coal interests from the Property.

NOTICE: This Declaration may impair the development of coal interests including workable coal seams or coal interests which have been severed from the Property.

[THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK]

N. [CONSENT OF LENDER AND TRUSTEE

Grantor is the maker of a note dated _____ secured by a deed of trust dated _____ from the Grantor to _____ as trustees and either of whom may act, recorded in the Clerk's office in Deed Book _____ at page _____, for the benefit of Conneauttee Creek Mitigaion Bank (The "Deed of Trust."). _____, as trustees, join herein for the sole purpose of subordinating the lien, dignity and priority of the Deed of Trust to this Declaration. Conneauttee Creek Mitigation Bank joins herein for the sole purpose of consenting to the trustee's actions.]

IN WITNESS WHEREOF said GRANTOR has executed this Declaration the day and year first above written.

***[COMPANY OR GOVERNMENT
ENTITY NAME OF GRANTOR, IF
APPLICABLE]***

BY: _____
***[TITLE OF OFFICER OF GRANTOR
ENTITY, OR GRANTOR'S NAME, IF AN
INDIVIDUAL]***

IN WITNESS WHEREOF, intending to be legally bound, the Parties have executed this Declaration the day and year first above written.

GRANTOR:

By: _____

By: _____

Name: _____

Title: _____

WITNESS:

COMMONWEALTH OF PENNSYLVANIA :
 : SS
COUNTY OF _____ :

On _____, before me, a Notary Public for the Commonwealth aforesaid, personally appeared _____, who acknowledged himself/herself to be the _____ known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have set my hand and official seal.

Notary Public
My commission expires:

[SEAL]