

INSTRUCTIONS
FOR
MODEL PROTECTIVE COVENANTS
(DEED RESTRICTIONS AND CONSERVATION EASEMENTS)
FOR PASPGP-5

These instructions are for activities/projects proposing construction or expansion of residential, commercial, or institutional subdivisions or developments and include greater than 0.25 acre of wetland(s), which are located within the property boundary of the project, but outside of the total wetland area(s) directly impacted by the proposed regulated activity(ies). These projects are potentially eligible for authorization under PASPGP-5 as a Non-reporting activity. Applications for PASPGP-5 authorization that do not include a proposed Protective Covenant protecting the remaining wetland(s) from activities such as filling, draining, mowing, placement of structures, cutting of vegetation, clearing, or plowing of natural vegetation, will be forwarded to the appropriate district of the U.S. Army Corps of Engineers (Corps) as a Reporting Activity. Additional information can be obtained by contacting the Corps or Pennsylvania Department of Environmental Protection (PADEP).

The Protective Covenants are in the form of:

- A. Declaration of Restrictive Covenants for Conservation (Deed Restriction): This Protective Covenant is the most commonly used. It is a legal agreement between the grantor, typically the property owner or applicant, and the Corps; or
- B. Conservation Easement: This Protective Covenant is to be used when the easement property interest (not the property itself) in protected wetland(s) is to be conveyed to a third party holder. It is a legal agreement between the grantor, typically the property owner or applicant, the Corps, and a third party, e.g., a watershed group; environmental organization; local, county, or state government; or government agency.

The Protective Covenant templates and a copy of the PASPGP-5 are available on the Corps Web site at: <http://www.nab.usace.army.mil/Missions/Regulatory.aspx>

Please carefully read and follow the instructions below:

1. An attorney licensed in the Commonwealth of Pennsylvania shall prepare the Protective Covenant;
2. An attorney licensed in the Commonwealth of Pennsylvania **must** sign the protective covenant prior to recordation in the appropriate County land records office (do not record prior to submittal to PADEP, County Conservation District (CCD) or the

Corps for review and approval). This is **mandatory** and ensures that the Protective Covenant, as prepared, is in full compliance with Pennsylvania law;

3. Include a clear, concise legal description of the wetlands to be protected, in the form of metes and bounds. This documentation will be Exhibit A and entitled “Metes and Bounds of the Conservation Area(s)”. Include the name of the project and date on this exhibit;
4. Include clear, concise appropriately scaled mapping of the wetlands to be protected. The protected areas should be identified as “Conservation Area(s) Boundaries”. This document will be Exhibit B and entitled “Conservation Area(s) Boundary Map”. Include the name of the project and date on this exhibit;
5. For purposes of the unrecorded draft or executed (signed, but not recorded) Protective Covenant:
 - a. Under **NO** circumstances will the final page showing recordation be complete prior to review and approval by the Corps, PADEP, or the designated County Conservation District;
 - b. All other blanks in the instrument **must** be filled in;
 - c. *Italicized language* and some of the [Bracketed] sections are included for instructional purposes only, and should be removed from the final version of the instrument, as appropriate;
 - d. Some of the bracketed sections require a language selection to be made – retain the language selected and delete the rest;
 - e. Citation of the applicable legal authority **must** be selected, as needed, from Section 1. PURPOSE,;
 - f. The bog turtle optional language in Section 4. RESTRICTIONS I. Agricultural Activities is to be used only if bog turtle habitat is present in the designated “Conservation Area” (wetland(s) to be protected);
 - g. Section 11. CONSENT OF LENDER AND TRUSTEE, is for use only in instances when a bank or other financial institution retains a mortgage on the affected property – use only if this situation applies;
 - h. All of the necessary names of parties and signatories (except for the notary public) **must** be legible on Protective Covenant; and
 - i. The necessary exhibit(s) **must** be included with the submittal of the Protective Covenant.
4. The Protective Covenant must **NOT** be recorded when submitted to the reviewing agency (or in the application submittal). The draft or executed (signed) Protective Covenant must be otherwise complete and ready for execution (signatures) and recording (or recording only, if already signed by appropriate parties);
5. Provided the model Protective Covenant is submitted with an application and it is accurately completed, the PADEP or designated CCD reviewer may issue the PASPGP-5;

6. If approved, a copy of the exhibits and, if appropriate, signed third party enforcement rights acceptance language (for conservation easements only) shall be attached to the Protective Covenant. The permittee shall ensure that the Protective Covenant, with a copy of the verification of the PASPGP-5 authorization, including the General Conditions, issued by the Corps or PADEP and any documents, including exhibits, enclosures, attachments, etc., related to the establishment of the protective covenant affixed, is recorded in the appropriate County land records office;
7. The Corps and PADEP **must** receive a copy of the recorded Protective Covenant prior to the initiation of the permitted work;
8. Future Phases: The Reserved Rights Section of the Protective Covenant provides for anticipated development within designated areas of the protected wetland(s) (“Conservation Area(s)”), for future phases of the project. If such changes are approved by the Corps as part of a permit authorization(s)/permit amendment(s) for the new phase(s) of work, the Exhibits A and B must be amended and recorded, specifically noted as “amendments” (the exhibits should not replace the existing Recorded document). Copies of the recorded amended Exhibits A and B must be provided to the Corps and PADEP prior to the initiation of the new phase(s) of permitted work.

U.S. Army Corps of Engineers District Offices

Pittsburgh District

Regulatory Branch
Federal Building
1000 Liberty Avenue
Pittsburgh, PA 15222-4186
412-395-7155

<http://www.lrp.usace.army.mil/Missions/Regulatory.aspx>

Baltimore District

Regulatory Branch
1631 South Atherton Street
Suite 101
State College, PA 16801
814-235-0570

<http://www.nab.usace.army.mil/Missions/Regulatory.aspx>

Philadelphia District

Regulatory Branch
Wanamaker Building
100 Penn Square East
Philadelphia, PA 19107-3390
215-656-6728

<http://www.nap.usace.army.mil/Missions/Regulatory.aspx>

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