

COMMONWEALTH OF PENNSYLVANIA
Department of Conservation and Natural Resources
Revised: 12/27/10 8:50 A.M.

Bureau of Recreation and Conservation (BRC)
Administrative Policy/Grant Guidelines

SUBJECT: Ownership and Control Policy

EFFECTIVE DATE: 10/5/09

REVISED: 12/27/10

BACKGROUND:

DCNR provides funding to grantees to acquire property, develop plans for sites/properties and to develop properties. Grantees must own or control property in order to receive grant funding from the Department for development and specific types of planning projects. If awarded a grant the grantee will be required to certify ownership or control of the property or facility.

POLICY:

Control of Property Deed Restrictions and Public Use

- For all development projects and Master Site Development Plans the applicant must own or control the property that will be developed or rehabilitated. Successful grantees will be required to provide a Certificate of Title signed by an attorney.
- Property that is not owned in fee simple must be controlled through a permanent easement or long-term lease agreement (minimum of 25 years) to protect facilities for their useful lifetime.
- Depending on the type of feasibility study, applicants may be required to have control of the site, either through ownership or a long-term lease agreement (minimum of 25 years) and provide evidence of this control.
- Where trails are to be developed on leased land, the Department requires the creation of a permanent easement or, at a minimum, a lease for 99 years, as trail corridors are established for the long-term and involve significant investment.
- In certain rare circumstances, the Department may consider, at its sole discretion, leases of shorter duration. The Director of the Bureau of Recreation and Conservation or a designee will make and communicate the Department's decision. All easements and lease agreements must be submitted with a Certificate of Title and will be reviewed by DCNR.

All property acquired in fee or through easements and/or land donations provided by grantees as match, funded with DCNR grant assistance require a non-conversion clause be included in the deed, easement or declaration of covenants restricting the use and transfer of the property.

For a fee simple interest in real property acquired, or donated as a match the declaration of taking or deed will include the following restriction:

- *[This provision revised 11/15/2010.]* This property, or interest in property, was either acquired with or donated as a match for funds provided by the Pennsylvania Department of Conservation and Natural Resources ("Department") The source of the funds is *[name of grant program and authorizing legislation*]* ("Act"). This property, or any portion of it, may not be converted to purposes other than those authorized under the Act for property acquired with Department funds. No change of use and no transfer of ownership, control, or interest in this property may occur, and no encumbrance may be placed on this property, without the written consent of the Department or its successor. The restriction in this paragraph applies to both the surface and subsurface of the property. This restriction has the effect of a covenant running in perpetuity with the land and is binding upon the owner(s) of the property and upon all subsequent owners, successors, and assigns. This restriction is enforceable by the Department and its successors.

For an easement acquired, or donated as a match the instrument of conveyance will include the following restriction:

- *[This provision revised 11/15/2010.]* This conservation easement was either acquired with, or donated as a match for, funds provided by the Pennsylvania Department of Conservation and Natural Resources ("Department") under the *[name of grant program and authorizing legislation*]* ("Act"). This easement is a conservation servitude over the property in perpetuity and as such is binding on all current and subsequent easement holders and their personal representatives, successors and assigns. The Department and its successors have the following rights with respect to this easement: a) the right to compel transfer of Holder's rights and duties under this easement to another Qualified Organization should Holder fail to uphold and enforce in perpetuity the restrictions applicable to the State Program Area or to other portions of the Property to the extent that Holder's failure to enforce the easement materially adversely affects the State Program Area; b) a right of prior approval of any amendment of this easement to determine whether the amendment permits uses of the State Program Area not permitted under the State Program or permits uses of other portions of the Property in a manner that would materially adversely affect the State Program Area; c) a right of prior approval of any transfer of Holder's rights and duties under this easement with respect to the State Program Area; and d) the right to exercise the Holder's rights and duties under this easement if Holder fails to uphold and enforce the provisions applicable to the State Program Area or to other portions of the Property to the extent that Holder's failure to enforce the easement materially adversely affects the State Program Area.
- Facilities and property funded by DCNR must be accessible to the public for uses consistent with the purposes for which the land was acquired and/or developed. For example, if the property is acquired for use as a public park, it must be accessible to the general public for park use. Likewise, if a property is acquired or developed as a trail it must be open to the public for trail use.

- For projects such as stream bank improvements, etc., that are not intended to be open to the general public, an agreement is required between the grantee and the landowner giving the grantee access to construct and maintain the improvements unless other provisions satisfactory to DCNR are made which satisfy these construction and maintenance requirements.
- Grantees must maintain ownership or control of the property or facility that will be developed, rehabilitated, etc. for use by the general public.

This policy remains in effect until revised or rescinded.