

Legislation Text

File #: 090435, **Version:** 0

Authorizing the Commissioner of Public Property to record a Declaration of Restrictive Covenants for Conservation with the Philadelphia County Recorder of Deeds on that certain deed conveying a parcel of land to the City of Philadelphia dated June 17, 1897 and recorded on June 18, 1897 in deed book WMG, Number 192, Page 155, for conservation of a tidal wetland located within Bartram's Garden, a park and botanical garden located at 54th Street and Lindbergh Boulevard, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Commissioner of Public Property is hereby authorized to record a Declaration of Restrictive Covenants for Conservation with the Philadelphia County Recorder of Deeds on that certain deed conveying a parcel of land to the City of Philadelphia dated June 17, 1897 and recorded on June 18, 1897 in deed book WMG, Number 192, Page 155, for conservation of a tidal wetland located within Bartram's Garden, a park and botanical garden located at 54th Street and Lindbergh Boulevard.

SECTION 2. The Declaration of Restrictive Covenants for Conservation shall be substantially in the form set forth in Exhibit "1" attached hereto, with such changes as the City Solicitor deems necessary or appropriate to protect the interests of the City.

EXHIBIT "1"

DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION

THIS DECLARATION OF RESTRICTIVE COVENANTS FOR CONSERVATION (hereinafter "Declaration") made this _____ day of ____, 2009, by **THE CITY OF PHILADELPHIA**, a City of the First Class of the Commonwealth of Pennsylvania (hereinafter "Grantor");

WITNESSETH:

WHEREAS, Grantor is the fee simple owner of a certain tract of land located in the City and County of Philadelphia, Pennsylvania, and being a property conveyed to the Grantor by deed dated June 17, 1897 and recorded on June 18, 1897 in deed book WMG No. 192 Page 155 in the land records of Philadelphia County, Pennsylvania, and as more particularly described in Exhibit A attached hereto and incorporated by reference, hereinafter referred to as the "Property;" and

WHEREAS, the United States Department of the Army, Corps of Engineers, through either its Baltimore, Philadelphia or Pittsburgh District, Regulatory Branch, (hereinafter "USACE"), and the Grantor have agreed that the Grantor would make the portion of the Property hereinafter referred to as the "Conservation Area" and more particularly described in Exhibit B attached hereto and incorporated by reference subject to the conservation-based covenants described in this Declaration as a condition of the attached Department of the Army Permit issued for the Pier 25 North project; and

WHEREAS, the Grantor agrees to the creation of these conservation-based covenants and intends that the Conservation Area shall be preserved and maintained in a natural condition in perpetuity;

NOW, THEREFORE, in consideration of the mutually-held interests in preservation of the environment, as well as the terms, conditions, and restrictions contained herein, and pursuant to the laws of the Commonwealth of Pennsylvania, Grantor does agree to the following terms and conditions:

1. PURPOSE

The purpose of this Declaration of Restrictive Covenants for Conservation is:

To preserve and protect the native flora, fauna, soils, water table and drainage patterns, and other conservation values of the Conservation Area;

To view the Conservation Area in its scenic and open condition; and in general,

To assure that the Conservation Area, including its air space and subsurface, will be retained in perpetuity in its natural condition as provided herein and to prevent any use of the Conservation Area that will impair or interfere with its natural resource functions and values. Grantor intends that this Declaration will confine the use of the Conservation

Area to such activities as are consistent with the purpose of this Declaration.

To accomplish the purpose of this Declaration, the following rights are created in accordance with Pennsylvania Statutes, Title 32, §§ 5051-5059:

A. To allow the Grantor, the USACE or the Pennsylvania Department of Environmental Protection (hereinafter "PADEP") the right to enter upon the Property to inspect the Conservation Area at reasonable times to monitor compliance with and otherwise enforce the terms of this Declaration; except that such entry shall be upon reasonable prior notice to Grantor;

B. To allow the Grantor, the USACE or the PADEP to enforce the terms of this Declaration by appropriate legal proceedings in accordance with Pennsylvania Statutes, Title 32, §§ 5051-5059 so as to prevent any activity on or use of the Conservation Area that is inconsistent with the purpose of this Declaration and to require the restoration of such areas or features of the Conservation Area that may be damaged by any inconsistent activity or use; and

C. To allow the Grantor, or their authorized representatives, to enter upon the Property and its Conservation Area at reasonable times, upon prior notice to the property owner; and upon prior notice and written approval by the USACE to take any appropriate environmental or conservation management measures consistent with the terms and purposes of this Declaration, including:

- 1) planting native trees, shrubs, grasses and forbs; and/or
- 2) restoring, altering or maintaining the topography, hydrology, drainage, structural integrity, bed, water quantity, water quality or other relevant feature of any stream, wetland, water body or buffer on the Conservation Area.

2. DURATION

This Declaration shall remain in effect in perpetuity, shall run with the land regardless of ownership or use, and is binding upon all subsequent declarants, their heirs, executors, administrators, successors, representatives, devisees, and assigns, as the case may be, as long as said party shall have any interest in any part of the Conservation Area.

3. PERMITTED USES

This Declaration will not prevent the property owner and the property owner's personal representatives, heirs, successors, and assigns from making use of the area(s) that are not expressly prohibited herein and are not inconsistent with the purpose of this Declaration.

4. RESTRICTIONS

Any activity on or use of the Conservation Area by the property owner and the property owner's personal representatives, heirs, successors, and assigns, inconsistent with the purpose of the Declaration is prohibited. Without limiting the generality of the foregoing, and except when an approved purpose under 1.C above, or as necessary to accomplish mitigation approved under the aforementioned permit, the following activities and uses are expressly prohibited in, on, over, or under the Conservation Area, subject to all of the express terms and conditions below:

- A. **Structures.** The construction of man-made structures on, in, over or above the ground or any water body, including but not limited to the construction, removal, placement, preservation, maintenance, alteration, or decoration of any buildings, roads, utility lines, billboards or other advertising. This restriction does not include bat boxes, bird nesting boxes, bird feeders, duck blinds, observation decks for viewing the tidal wetland, the placement of signs for interpretation, safety and or boundary demarcation purposes, and fencing for safety purposes and/or boundary demarcation purposes.
- B. **Demolition.** The demolition of fencing structures constructed for the purpose of demarcation of the Conservation Area or for public safety.
- C. **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.
- D. **Drainage.** The drainage or disturbance of the 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 instrument. This restriction does not require maintenance, mitigation or restoration of the Conservation Area due to water level changes in the Schuylkill River.
- E. **Wastes 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 under ground or into surface or ground water, except for pre-existing or approved project

-related stormwater discharges and any maintenance associated with those stormwater discharges.

F. Non-Native Species. The planting or introduction of non-native species.

G. Herbicides, Insecticides and Pesticides. The use of insecticides, pesticides, or herbicides 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 the public health and welfare are not included in this prohibition.

H. Removal of Vegetation. The mowing, cutting, pruning, removal, disturbance, destruction, or the collection of any trees, shrubs, or other vegetation, except for pruning, cutting or removal for:

- 1) safety purposes; or
- 2) control in accordance with accepted scientific forestry management practices for diseased or dead vegetation; or
- 3) control of non-native species and noxious weeds; or
- 4) scientific or nature study.

I. Agricultural, Livestock & Other Activities. Unless currently used for these purposes, conversion of, or expansion into, any portion of the Conservation Area for use for 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).

J. Other Material Impairment. Other acts, uses or discharges which adversely affect fish or wildlife habitat or the preservation of lands, wetlands or water areas within the Conservation Area.

5. INSPECTION, ENFORCEMENT & ACCESS RIGHTS

The USACE, the PADEP, and its/their authorized representatives shall have the right to enter and go upon the Property, to inspect the Conservation Area and take actions necessary to verify compliance with this Declaration. Such entry shall be upon prior reasonable notice to the property owner. The Grantor grants to the USACE, the U.S. Department of Justice, and/or 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; provided, however, that no violation of these restrictive covenants 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 any other judicial remedy such as civil penalties. Nothing herein shall limit the right of the USACE to modify, suspend, or revoke the Permit.

6. RECORDING & EXECUTION BY PARTIES

The Grantor agrees to record this Declaration in the Department of Records in and for the City of Philadelphia and provide the USACE with proof of recordation prior to the start of the work authorized by the attached permit.

7. NOTICE OF TRANSFER OF PROPERTY INTERESTS

No transfer of the rights of this Declaration, or of any other property interests pertaining to the Conservation Area or the underlying property it occupies shall occur without thirty (30) calendar days prior written notice to the PADEP and the USACE.

8. MODIFICATIONS

The restrictions contained in this Declaration are required by the attached Department of the Army Permit. There shall be no changes or alterations to the provisions in this Declaration without prior written approval from the appropriate district commander of the USACE.

9. RESERVED RIGHTS

A. The Grantor and any holders of easements or other property rights for the operation and maintenance of pre-existing or project-related structures or infrastructure such as 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 shall be shown on the accompanying plat map or approved plan and attached to this instrument.

B. If the authorized project requires any related or unanticipated utility relocation, drainage ditches, or stormwater controls within the identified Conservation Area, said activities must be applied for by the Grantor, project proponent, respective utility, or other appropriate party and may be permitted by the USACE.

10. 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, as the case may be, shall not be affected thereby.

11. MITIGATION

If the work required by a mitigation plan under the Department of Army permit for the authorized project occurs within the Conservation Area, then the Grantor is allowed to construct the mitigation work in accordance with the authorized mitigation plan, a copy of which is incorporated by reference.

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

By: _____
Commissioner of Public Property
City of Philadelphia

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 City of Philadelphia Commissioner of Public Property, and that s/he, as such Commissioner, being authorized to do so, executed, in my presence, the foregoing instrument for the purposes herein contained

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

Notary Public
My commission expires: _____

[SEAL]

Approved to Form by
Shelly R. Smith, City Solicitor

Per: _____
Senior Attorney

COMMONWEALTH OF PENNSYLVANIA :
: SS
COUNTY OF _____ :
:

Recorded in the Office for Recording of Deeds
in and for aforesaid County, in
Deedbook _____, Vol. _____,
Page _____.

Witness my hand and seal of Office
On _____

RECORDER OF DEEDS

GRANTOR