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2018 FEB -2 A 9 20

January 30, 2018

Environmental Quality Board
RegComments@pa.gov

**Public Testimony & Comments regarding:
Triennial Review of Water Quality Standards (47 Pa.B. 6609)
Consideration for Next Water Quality Standards Review**

My name is Kelly Germann, from Tinicum Conservancy. I am here on behalf of the 75 member organizations of the Pennsylvania Land Trust Association. I'm here to give comments drawn from a full comment letter submitted by Andrew Loza, the Executive Director of the Pennsylvania Land Trust Association.

The Triennial Review seeks comments regarding clarifications for how conservation easements should be considered in the evaluation for a stream redesignation. The Pennsylvania Land Trust Association (herein referred to as PALTA) welcomes this opportunity to comment in advance of possible rulemaking on this matter. Additionally, PALTA welcomes the opportunity to engage in further clarifying discussions on these matters prior to further rule making.

First, PALTA opposes any effort to eliminate the consideration of conservation easements during the evaluation for a stream redesignation. Our goal is to have PADEP broaden that consideration here, not eliminate or severely restrict it. PALTA asserts that the definition of conservation easements should reflect the definition used in Pennsylvania's Conservation and Preservation easements Act.

It is important that conservation easements play a greater, positive role in redesignation evaluations. Conservation easements - if held by ANY holder respecting the practices set forth in the document, "*Land Trust Standards and Practices*," as published by the Land Trust Alliance - can reliably deliver consistent water quality protections.

PALTA suggests a definition of a "qualified conservation easement" be introduced that incorporates the definition of "conservation easement" contained in Pennsylvania's Conservation and Preservation

- Voting Members
- Allegheny Land Trust
- Allegheny Valley Conservancy
- Allegheny Valley Land Trust
- Allegheny Valley Trails Association
- Appalachian Trail Conservancy
- Armstrong County Conservancy Charitable Trust
- Audubon Society of Western Pennsylvania
- Bedminster Regional Land Conservancy
- Berks Nature
- Brandywine Conservancy
- The Buck Hill Conservation Foundation
- Central Pennsylvania Conservancy
- Centre County Farmland Trust
- Chestnut Hill Historical Society
- ClearWater Conservancy
- The Conservation Fund, Pennsylvania Office
- Countryside Conservancy
- Delaware Highlands Conservancy
- Earth Conservancy
- East Nantmeal Land Trust
- Eden Hill Conservancy
- Edward L. Rose Conservancy
- Evergreen Conservancy
- Farm and Natural Land Trust of York County
- Foundation for Sustainable Forests
- Fox Chapel Land Conservation Trust
- French and Pickering Creeks Conservation Trust
- French Creek Valley Conservancy
- Hawk Mountain Sanctuary Association
- Heritage Conservancy
- Hollow Oak Land Trust
- Independence Conservancy
- Lacawac Sanctuary Foundation
- Lackawanna Valley Conservancy
- Lancaster County Conservancy
- Lancaster Farmland Trust
- The Land Conservancy for Southern Chester County
- Land Conservancy of Adams County
- Lebanon Valley Conservancy
- London Britain Land Trust
- Lower Merion Conservancy
- Manada Conservancy
- Merrill Linn Land & Waterways Conservancy
- Mid-Atlantic Keast Conservancy
- Mokoma Conservancy
- Montour Trail Council
- Mount Nittany Conservancy
- Natural Lands Trust
- The Nature Conservancy
- Neighborhood Gardens Trust
- North American Land Trust
- North Branch Land Trust
- Northcentral Pennsylvania Conservancy
- Open Land Conservancy of Chester County
- Pennsbury Land Trust
- Pennsylvania Recreation & Park Society
- Pennypack Ecological Restoration Trust
- Pine Creek Land Conservation Trust
- Pine Creek Valley Watershed Association
- Pocono Heritage Land Trust
- The Radnor Conservancy
- Regional Trail Corporation
- Schuylkill County Conservancy
- Somerset County Conservancy
- Susquehanna Greenways Partnership
- Tinicum Conservancy
- The Trust for Public Land
- The Wallace Trust
- West Pikealand Land Trust
- Western Pennsylvania Conservancy
- Westmoreland Conservancy
- Westmoreland Land Trust
- Wild Waterways Conservancy Inc.
- Wildlands Conservancy
- Willstown Conservation Trust
- Wysahickon Valley Watershed Association



Easements Act, and then adds standards specific to Chapter 93—standards that will ensure consistent water quality protections in perpetuity.

The Department’s suggested additional sentence defining “Outstanding National, State, regional or local resource water” accordingly would be modified to change the term “conservation easements” to “qualified conservation easements.”

The *Model Grant of Conservation Easements* published by the Pennsylvania Land Trust Association, and used by most Pennsylvania land trusts, holds as the first objective,

- To maintain and improve the quality of water resources, both surface and groundwater, within, around, and downstream of the Property. (§1.04(a)(1))

Additional covenants that back this purpose, including, among others:

- A prohibition on gas and oil extraction that presents any risk to water resources (§3.02(b)(7))
- Limitations on impervious coverage (§4.01(c))
- A prohibition on agriculture near waterways (§4.02(b)(1)), and
- A prohibition on forestry unless conducted in accordance with a plan that protects water quality (§4.02(c))

The Department’s tentative proposal provides that conservation easements must not be amendable. PALTA believes that amendments are important to strengthening conservation protections over time and to improving administrative practices as better understandings are developed, and thus need to be permitted. Land trusts operate within a robust infrastructure that ensures that amendments of easement documents advance rather than diminish conservation protections.

Finally, the Department’s preliminary proposal takes the approach of requiring government to have an ownership interest in the

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conservation easement, either as a holder or a beneficiary of the easement. Presumably, this approach assumes that government has greater capacity or willingness to uphold an easement's purpose than a private charitable land trust. PALTA believes, based on decades of exemplary land trust conduct—in building common land trust standards and diligently monitoring and enforcing easements—that such an assumption is unfounded.

Furthermore, there are practical ways to ensure that a specific land trust has sufficient capacity to uphold an easement's water quality objectives that do not have to rely on government involvement.

Again, we look forward to holding more detailed discussions on this issue prior to the next water quality standards review and rule making period.

Thank you for your consideration