

JASON W WALLS
WVU COLLEGE OF LAW
PO BOX 6130
MORGANTOWN, WV 26506-6130

Carye L. Blaney
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DEED RESTRICTION

THIS DECLARATION OF DEED RESTRICTIONS FOR CONSERVATION (“Declaration”) made this 11th day of APRIL, 2017, by The West Virginia Land Trust, Inc. (“Grantor”), having an address at P.O. Box 11823, Charleston, WV 25339-1823;

WITNESSETH:

WHEREAS, The West Virginia Land Trust, Inc. (“WVLT”) is the owner of certain real property consisting of three tracts of land containing in the aggregate 173.534 acres identified as Tax Map 12, Parcel 3 situate in Clinton District, Monongalia County, West Virginia (hereinafter “the Property”), and the Property is also described in a deed of record in the office of the Clerk of the County Commission, Monongalia County at Deed Book 1585, Page 327; and

WHEREAS, Grantor, having the authority to do so, intends to record this Declaration in order to restrict subsequent disturbance and/or development of that certain portion of the surface of the Property described on Exhibits 1 - 13 attached hereto (collectively, the “Conserved Area”) in perpetuity;

WHEREAS, the Conserved Area possesses open space and natural values (collectively, “Conservation Values”) of great importance to Grantor, the people of Monongalia County, and the people of the State of West Virginia, and all current and future generations of mankind; and

WHEREAS, preservation of the Conserved Area is consistent with a central objective of a Consent Decree in the matter of United States et al. vs. XTO Energy Inc., Civil Action No. 1:14CV218 (“XTO CD”), Grantor agrees that USACE, EPA, and WVDEP, and their successor agencies (collectively “Third Parties”), are third-party beneficiaries under this Declaration, except that nothing herein creates a property interest in the Federal Government or the State of West Virginia with regard to the Conserved Area;

NOW THEREFORE, Grantor hereby agrees that the Conserved Area shall be subject in perpetuity to the following conveyances, covenants and restrictions:

1. This Declaration shall be a burden upon and shall run with the Conserved Area, and shall bind Grantor, its successors and assigns, in perpetuity.
2. Grantor shall record this Declaration in the Land Records of the county or counties where the Property is located within sixty (60) days of the effective date of this Declaration. Grantor shall provide XTO Energy, Inc. (“XTO”) and Third Parties with proof of recordation within thirty (30) days of recording by the County Clerk.

3. The following activities are *prohibited* in the Conserved Area, except as necessary for the control of alien invasive or noxious plant or animal species, as set forth in Paragraph 4 or as necessary to accomplish restoration and/or mitigation described in Paragraph 11:
 - a. Division, subdivision and de facto subdivision of the Conserved Areas;
 - b. Removal, excavation, dredging, or disturbance of the surface;
 - c. Dumping of, storage of, or filling with soil, rock, biological material, trash, ashes, garbage, waste, or other materials;
 - d. Draining, impounding, or impairing the flow or circulation, or reducing the reach of waters, including wetlands; or any other discharge or activity requiring a permit under applicable clean water or water pollution control laws and regulations, as amended;
 - e. Construction of buildings, structures, and other improvements including roads and motorized vehicle trails; with the exception of the excepted activities set forth in Paragraph 4;
 - f. Industrial or commercial use of the Conserved Areas, including, but not limited to: commercial logging, feedlots of any variety, dog kennels, horse farms, mining, gravel extraction, campgrounds, motels, hotels, restaurants, vendors, advertising, and all enterprises that are not for educational purposes and are likely to substantially intensify congestion, noise and/or traffic, or impinge upon the resource in a way so as to manipulate or destroy the native vegetation, soils and hydrology;
 - g. Agricultural use of the Conserved Areas, including, but not limited to, farming and animal raising and/or grazing, including, but not limited to, cattle, equine, and poultry;
 - h. Alteration of the existing pattern of vegetation through removal, destruction, or planting of vegetation;
 - i. Disturbance or alteration of the top soil or existing slope and contours of the ground within the Conserved Areas in a manner which could result in significant erosion of soil or substrate, or placing on the Conserved Areas any soil, dredging spoils, landfill or other material in any amount that would significantly change the topography;
 - j. Conversion of, or expansion into, any portion of the Conserved 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);

- k. The use of fertilizers, herbicides, pesticides, biocides or chemicals of any kind on the Conserved Areas, except as necessary to control or remove alien invasive or noxious plant or animal species;
 - l. Removal or clearing of live vegetation, including trees, unless Grantor demonstrates that such removal will result in habitat enhancement or to prevent a safety hazard, and Grantor has received written approval of the West Virginia Department of Environmental Protection;
 - m. The use of the Conserved Area to provide required open space for the development or subdivision of another property or to determine any other permissible residential, commercial or agricultural uses of another property; or any legal or de facto division, subdivision or portioning of the Conserved Area;
 - n. Use of motorized vehicles, including outdoor recreational vehicles, except on the designated roadways as otherwise provided for in Paragraph 4, and except as necessary to inspect, manage, or provide emergency access to the Conserved Area; and
 - o. Any other use of or activity in the Conserved Area that is inconsistent with the purpose of this Declaration.
4. The following activities in the Conserved Area are not subject to the restrictions of Paragraph 3:
- a. Maintenance and improvements may be made to allow continued access to roadways, foot bridges, and trails for non-motorized use already in place as long as it does not increase the displacement of surface water or runoff. Additional roadways or trails for non-motorized use may be created, if not already in place, only as long as located in the predetermined areas of the Conserved Area as reflected in attached exhibits, provided that Grantor, or its successors or assigns first acquires any and all necessary state, federal or local permits needed prior to commencing construction;
 - b. The aforementioned trails for non-motorized use shall be defined as one to three-foot wide, single-tread, earthen-based trails within the proposed Conserved Areas. These trails will not require the addition of any trail base materials or clearing of trees, but will require limited clearing and pruning of existing vegetation (saplings up to 1" DBH) to create and maintain the trails. The overall trail corridor to be created and maintained will not exceed 60 inches in width or 84 inches in height. Limited earth work may be conducted to create and maintain the trails, as appropriate;
 - c. With regard to logging roads solely within those areas designated on exhibits, attached hereto, such logging roads shall be limited to 20-foot wide areas along

- the path of the existing logging roads and may be converted or improved as non-permeable surface access roads;
- d. Beyond the conversion or improvement of the aforementioned logging roads in Paragraph 4(c), two stream crossing structures can be installed each within an 8-foot wide by 20-foot long area as designated on attached exhibits, and only so long as they bridge the Ordinary High Water Mark on their respective streams. For smaller streams, trail treads will terminate outside the annual high water mark of each stream to be crossed by the minor trails, and each stream will be forded on foot or on a bicycle without any maintained structure to support them;
 - e. Other activities as designated in the EPA-approved On Site-Restoration and Mitigation Plan;
 - f. Small signage to mark a trailhead or of an educational nature, including, but not limited to designation of a particular resource, or information regarding the mission of the grantor; and
 - g. Removal of standing dead trees to prevent a hazard to persons or property and overall, activities designed to achieve restoration, management, and maintenance of areas that would receive ecological benefit from said restoration, management, and maintenance activities.
5. It is the purpose of the Declaration to assure that the Conserved Area will be maintained as such and to prevent any unauthorized disturbance and/or development to the Conserved Area.
 6. Notwithstanding any provisions to the contrary, this Declaration is subject to and subordinate to any existing and duly recorded rights with respect to the Conserved Area. All structures, infrastructure, as well as all pre-existing easements or other duly recorded rights in the Conserved Area identifiable through a title search extending to documents placed of record within twenty (20) years prior to the date of this Declaration, shall be indicated on attached exhibits, which is attached to this instrument and includes a copy of the most recent property deed for the Property and a legal description sufficient to identify the boundaries of the Conserved Area. Grantor certifies that to Grantor's actual knowledge, there are no previously granted easements existing in the Conserved Area that interfere or conflict with the purpose of this Declaration.
 7. All mortgages and deeds of trust granted or entered into after the date hereof affecting the Conserved Area will be subordinate to this Declaration.
 8. The Conserved Area is subject to the XTO CD. Each deed, title or other instrument conveying an interest in the Conserved Area shall contain a notice stating that the Property is subject to the XTO CD and shall reference the recorded location of the XTO CD and any restrictions applicable to the Property under the XTO CD.

9. XTO and Third Parties shall have the right to:
 - a. enter upon the Conserved Area, and such other portions of the Property as may be necessary or convenient, for the purpose of inspecting the Conserved Area to determine compliance with the purposes and terms of this Declaration, or for any other purpose authorized by this Declaration or by the XTO CD, including, without limitation, inspecting, monitoring, sampling, verifying, evaluating, and enforcing the conduct of, the restoration and/or mitigation described in Paragraph 11. When practicable, such entry shall be upon prior reasonable notice to the Property owner. This right of entry is in addition to and does not limit any right of entry otherwise granted by Federal or State law;
 - b. take any and all action within the Conserved Area necessary to address a situation that poses an immediate risk to health, life, property or the environment; and
 - c. take any and all action within the Conserved Area required by Federal or State law or approved by the Third Parties.
10. Grantor grants to Third Parties a discretionary right to enforce this Declaration. In the event of a breach of this Declaration by Grantor or another party, Third Parties shall notify Grantor of the breach. If Grantor fails to take corrective action within 60 days of such notice, Third Parties may undertake actions to effect such corrective action, including bringing a judicial action against any person(s) or entity(ies) violating or attempting to violate this Declaration: provided, however, that no violation of this Declaration shall result in a forfeiture or reversion of title. In any enforcement action, an enforcing party shall be entitled to a complete restoration for any violation, as well as any other judicial remedy such as civil penalties. The costs of breach, correction and/or restoration, including Third Parties' expenses, court costs, and attorney's fees, shall be paid by Grantor, provided Grantor is determined to be responsible for the breach. Enforcement shall be at the discretion of Third Parties, and no omissions or delay in acting shall constitute a waiver of any enforcement right. These rights are in addition to, and shall not limit, enforcement rights available under other provisions of law or equity, under any applicable permit or certification, or under the XTO CD.
11. XTO and/or its contractors shall have the right to enter upon the Conserved Area, and such other portions of the Property as may be necessary or convenient, for the purpose of performing any work required by a restoration or mitigation plan approved under the XTO CD, including construction, planting, maintenance, monitoring, long-term management, or any other restoration, enhancement, or mitigation work specified therein, provided such work is conducted in accordance with such approved plan.
12. Grantor reserves to itself, its successors or assigns, all rights as owners of the Property, including the right to engage in all uses of the Conserved Area not inconsistent with the purpose and terms of this Declaration.

13. Grantor shall provide XTO and Third Parties written notice of any transfer or change in ownership of, or of the execution of any subsequent easement affecting, any portion of the Conserved Area, including but not limited to the name and address of the new owner at least thirty (30) days prior to the transfer or change in ownership, or execution of such easement.
14. Grantor agrees that the terms, conditions, restrictions and purposes of this Declaration will be inserted in any subsequent deed, subdivision deed, lease, sub-lease or other legal instrument by which Grantor divests itself of any interest in any portion of the Conserved Area. Notwithstanding the failure of Grantor to include the terms and restrictions of this instrument, it shall run with the land and be binding on all heirs, successors and assigns.
15. Notwithstanding anything contained herein to the contrary, any modification or termination of this Declaration shall require the prior written approval of Third Parties. Amendments to this Declaration must be in writing, and must be consistent with the conservation purposes of this Declaration. Grantor shall record any modification or termination of this Declaration in the Land Records of the county or counties where the Conserved Area is located within sixty (60) days of executing such a modification or termination. Grantor shall provide XTO and Third Parties with proof of recordation within thirty (30) days of recording by the County Clerk.
16. For any modification, transfer, conveyance, or assignment accomplished under Paragraph 13 and 15, Grantor shall amend this instrument by preparing and submitting:
 - a. A revised plan and metes and bounds description for the area to be preserved under the Declaration (hereinafter the “Modification Documents”); and
 - b. An Amended Declaration of Deed Restrictions that reflects the modifications to the original Declaration, the justification for the modification, and that also includes the deed book and page of the title deed for the property or properties subject to the modified Declaration set forth in the Modification Documents.
17. Grantor shall record the documents listed in Paragraph 16, above, in the same manner and place as this original Declaration was recorded.
18. Miscellaneous.
 - a. The laws of the State of West Virginia shall govern the interpretation and performance of this Declaration.
 - b. If any provision of this Declaration or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Declaration, or the 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.

- c. Should there be more than one Grantor, the obligations imposed by this Declaration upon each Grantor shall be joint and several.
- d. The covenants, terms, conditions and restrictions of this Declaration shall continue as a servitude running in perpetuity with the Conserved Area.
- e. The captions in this Declaration have been inserted solely for convenience of reference and are not a part of this Declaration and shall have no effect upon construction or interpretation.
- f. The covenants, terms, conditions, restrictions and purposes imposed with this Declaration shall not only be binding upon Grantor but also upon its agents, personal representatives, executors, assigns and all other successors to it in interest, and shall continue as a servitude running in perpetuity with the Conserved Area.
- g. The rights and remedies of XTO and the Third Parties under this Declaration shall inure upon and to the benefit of each of XTO, the Third Parties, and their respective successors and assigns.

19. Any notice, demand, request, consent, approval or communication under this Declaration shall be sent by certified mail, return receipt requested or reliable overnight courier, addressed as follows:

To Grantor:

Executive Director
The West Virginia Land Trust, Inc.
PO Box 11823
Charleston, WV 25339-1823

To XTO:

Brian Teller
Drilling Manager
190 Thorn Hill Rd.
Warrendale, PA 15086

To Third Parties:

TO EPA:

Pamela J. Lazos
Senior Assistant Regional Counsel
Office of Regional Counsel
United States Environmental Protection Agency
Region III

MC 3RC20
1650 Arch St.
Philadelphia, PA 19103-2029

Associate Director, Office of Environmental Programs
Environmental Assessment and Innovation Division
United States Environmental Protection Agency
Region III
MC 3EA40
1650 Arch St.
Philadelphia, PA 19103-2029

TO THE CORPS:

Dana M. Adipietro
Assistant District Counsel
U.S. Army Corps of Engineers
Pittsburgh District
1000 Liberty Ave., 22nd Floor
Pittsburgh, PA 15222

Jon Coleman
Chief, Southern Section, Regulatory Branch
U.S. Army Corps of Engineers
Pittsburgh District
1000 Liberty Ave., 22nd Floor
Pittsburgh, PA 15222

TO WVDEP:

Chief Inspector
Environmental Enforcement
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304

Chief
Office of Oil and Gas
West Virginia Department of Environmental Protection
601 57th St.
Charleston, WV 25304

20. A party may change the address or person to whom notices to it are required to be given by notice given in the manner above provided.

IN WITNESS WHEREOF, Grantor has set its hand and seal on the day and year first above written, and directs that this instrument be recorded in the office of the Clerk of the County Commission of Monongalia County, West Virginia.

The West Virginia Land Trust, Inc.

By: Brent Bailey

Name: BRENT BAILEY

Title: EXECUTIVE DIRECTOR

STATE OF West Virginia
COUNTY OF Monongalia

Be it remembered that on this 11 day of April, 2017, before me, the subscriber, a Notary Public, personally appeared: Brent Bailey, Executive Director of The West Virginia Land Trust, Inc., and he thereupon acknowledged that he signed the foregoing instrument in such capacity, and that said instrument is the voluntary act of deed of The West Virginia Land Trust, Inc.

E. G.

Printed Name: Erica Hetzel

A Notary Public of West Virginia

My Commission Expires: April 18, 2021



This instrument prepared by:

Jason M. Walls, Esq.
Land Use and Sustainable Development Law Clinic
WVU College of Law
P.O. Box 6130
Morgantown, WV 26506-6130