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Conservation Easements

Description

Conservation easements are voluntary agreements that allow individuals or groups to limit the type or amount of development on their property. A conservation easement can cover all or just a portion of a parcel of land, and it can either be permanent or temporary. Typically, easements typically describe the resource they are designed to protect (e.g., agricultural, forest, historic, or open space easements), and they explain and mandate the restrictions on the uses of the particular property. Easements can relieve property owners of the burden of managing these areas. They do so by shifting responsibility to a private organization (land trust) or government agency better equipped to handle maintenance and monitoring issues. Furthermore, in some cases, property owners who place conservation easements on some or all of their property might realize tax benefits and/ or stormwater/water quality fee credits.

Conservation easements may indirectly contribute to water quality protection. Land set aside in a permanent conservation easement has a prescribed set of uses or activities that generally restrict future development.

The location of the land held in a conservation easement may be evaluated to determine its ability to provide water quality benefits. Property along stream corridors and shorelines can act as a vegetated buffer that filters-out pollutants from stormwater runoff. The ability of a conservation easement to function as a stream buffer depends on the width of the easement and in what vegetated state the easement is maintained (see Section 9.2 Buffer Zone).

Conservation easements are typically intended to preserve agricultural land and natural areas threatened by development. For rapidly urbanizing areas, conservation easements may be a way to preserve open space before land prices make the purchase of land containing important cultural and natural features impractical for governmental or non-governmental agencies with limited budgets. In addition, private land trusts may limit the size and type of the land that they are willing to manage as conservation easements.

Conservation easements are designed to assure that the land is preserved in its current state long after the original owners no longer control the property. By agreeing to give up or restrict the development rights for a parcel of land, landowners can guarantee that their property will remain in a prescribed state for perpetuity. Often, state agencies and private land trusts have specific qualifications for a property before they will enter into an easement agreement with landowners.

Design Considerations

Below are examples of criteria used by private land trusts to determine if a parcel of land is worth managing in a conservation easement.

- Natural resource value: Does the property provide a critical habitat or important environmental aspects worth preserving?
- Uniqueness of the property: Does the property have unique traits worth preserving?
- Size of land: Is the land large enough to have a natural resource or conservation value?
- Financial considerations: Are funds available to meet all financial obligations?
- Perpetuity: Is the conservation agreement a perpetual one?
- Land trust's mission: Does the property align with the land trust's mission and the organization's specific criteria?

Structural Components

Conservation easements are used in all parts of the country, and many private groups, both nationally and locally, exist to preserve natural lands and manage conservation easements. States also use conservation easements and land purchase programs to protect significant environmental features and tracts of open space.

Local conservation programs include: *The Land Trust for Tennessee*. Founded in 1999, it assists families and communities in protecting critical open spaces throughout the state to meet their land conservation needs. Go to <http://www.landtrusttn.org/> for information on conservation easements including recent news on tax incentives, answers to frequently asked questions and contacts.

Regardless of whether a conservation easement is held by a government agency or a private land trust, certain management responsibilities must be addressed by the easement holder. The following is a list of some of these management duties:

- Ensure that the easement's language is clear and enforceable.
- Develop maps, descriptions and baseline documentation of the property's characteristics.
- Monitor the use of the land on a regular basis.
- Provide information regarding the easement to new or prospective property owners.
- Establish a review and approval process for land activities stipulated in the easement.
- Enforce the easement's restrictions through the legal system, if necessary.
- Maintain property/easement-related records.

A helpful guide for attorneys drafting conservation easements is **The Conservation Easement Handbook (2005)** by The Land Trust Alliance (LTA) and the Trust for Public Land (TPL). The handbook reads like a how-to manual and includes The Conservation Easement Drafting Guide - a section with five chapters dedicated to checklists, sample easement provisions and commentary. Selections from the handbook and ordering information are available online at www.lta.org/publications or at www.tpl.org/publications.

- Maintenance** The responsibility for maintenance of property in a conservation easement depends on the individual agreement with a land trust or agency. While many organizations assume the responsibility for managing and monitoring a property, some land trusts leave maintenance responsibilities to the landowner and act only to monitor that the terms of the easement are met.
- Limitations** A number of limitations exist for using conservation easements as a stormwater management tool. For example, conservation easements are often not an option in more urbanized areas, where the size, quality, and cost of land restricts their use. Some easements might also not be held in perpetuity, which means that land could still face development pressure in the future.
- Easements also may not provide for the filtering of pollutants from concentrated flows. More information on the filtering potential of stream buffers can be found in the Buffer Zone (BuZ) BMP Section 9.2 in this Manual and in EPA’s Riparian/Forested Buffer fact sheet http://cfpub1.epa.gov/npdes/stormwater/menuofbmps/index.cfm?action=factsheet_results&view=specific&bmp=82).
- Effectiveness** The pollutant removal efficiency of land protected by a conservation easement depends on how much land is conserved, the techniques used to conserve it, and the specific nature of the easement.

Photo 1 Tennessee River Gorge Trust Property



(Source: <http://www.trat.org>)

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