



Conservation Easements

SC NEMO Fact Sheet #T2

Conservation easements are increasingly being used in both private and public sectors as a means to preserve open space. Public officials often do not understand all the legal ramifications of accepting easements on behalf of their community. Landowners, interested in preserving land, are often encouraged to use easements yet they are also confused as to the tax implications and rights of the grantor and grantee.

One trend seems clear however, because of the many benefits they provide, easements in many forms will continue to be used as a tool to conserve open space.

WHAT IS A CONSERVATION EASEMENT?

A conservation easement may be defined as: a partial interest in property that is transferred to a non-profit or government entity. The landowner retains legal title and all rights associated with the land except the right to develop the property. As ownership changes, the land remains subject to easement restrictions.

ADVANTAGES OF CONSERVATION EASEMENTS TO LANDOWNER

The key advantage of a conservation easement to a landowner is the retention of ownership and some control over the uses permitted on the land. An easement can be tailored to fit the needs and desires of the property owner.

The easement may allow some uses that could generate income such as forestry or farming. The land under easement can also be rented or

sold. The owner can control the land so as to insure privacy, security and maintenance. The owner can limit or control access to the property. Some owners feel that governments and non-profits are not-always the best managers of land and if land is donated to them they might decide to ignore it or develop it in an adverse way. Some owners are reluctant to turn land over to an entity, such as a land trust, whose future existence or membership philosophy is unclear.

Conservation easements provide economic benefits to the landowner. They might obtain money from the sale of development rights or rental fees. Over time the market value of the land might increase, even with the development rights removed. Retaining ownership during development might also mean that one doesn't give away acreage that could become part of a legal lot or two. Finally, there are potential estate tax benefits from donation of land with conservation easements.

ADVANTAGES OF CONSERVATION EASEMENTS

Land preserved under conservation easements are less expensive to obtain than fee simple purchases. Land under easement remains on the tax rolls and while it might not generate large tax dollars, the open space requires little or no municipal services. Conservation easements work well to protect natural resources where public access is not needed. These lands also have reduced administrative costs and pose limited liability concerns.

PUBLIC POLICY ISSUES RELATED TO CONSERVATION EASEMENTS

- Easements *should relate to comprehensive Open Space Plan and the Planning Commission's policy regarding open space dedication and payment in lieu of dedication during subdivision*. For example, if lands to be developed are identified in the open space plan, the planning commission might seek dedication either by easement or outright. If the open space plan has not identified the land slated for development, then a payment in lieu of dedication might be sought. Where local governments are concerned with natural resource protection, easements with little or no public access make sense. Where recreation is a need, land dedication or purchase is suggested so full public access is assured.
- Local governments *should know the characteristics of the land* to be preserved by easement *and make sure the easement is worded to address those special features* (e.g., in riparian zones, the town or county might want to assure access to the river to make necessary improvements).
- Easements *should provide adequate rights to properly protect land not just protect the landowner* (i.e. there may be a need to include provisions for forest management, removal of invasive plant species or access for routine maintenance).
- A clear policy *needs to be established as to when and how easements get filed in the land records*. Some local governments

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make sure subdivision maps clearly denote "lands to be conveyed as open space" yet the related documents never get filed. They can slip through the cracks of local bureaucracy. How the land records are flagged regarding conservation easement is another issue of concern.

- Who monitors and enforces easements? In some jurisdictions zoning enforcement officers are charged with monitoring easements while others name neighborhood associations, land trusts or planning commissions. The legal powers of those charged with easement enforcement *need to be reviewed and clearly enunciated*.
- Land protected by conservation easements *should have boundary markers so the land can be properly monitored*.
- Lands protected by easements *should have detailed management plans so officials have a clear understanding of any needs or problems associated with the land*.
- More information on conservation easements can be obtained from your local land trusts, the Nature Conservancy or county extension offices.