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Community Development

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Conservation Easements

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Land Use Series

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A conservation easement is a restriction placed on a piece of property to protect the resources (natural or man-made) associated with the parcel. The easement is either voluntarily sold or donated by the landowner, and constitutes a legally binding agreement that prohibits certain types of development (residential or commercial) from taking place on the land. The purpose of this fact sheet is to answer a number of frequently asked questions about conservation easements. For specific information on the purchase and sale of conservation easements, see OSU Extension Fact Sheet, Purchase of Development Rights (PDR), CDFS-1263-98.

Frequently asked questions: Conservation Easements

What is an easement?

Ownership of a piece of property may best be described as a "bundle of rights." These rights include the right to occupy, use, lease, sell, and develop the land. An easement involves the exchange of one or more of these rights from the landowner to someone who does not own the land. Easements have been used for years to provide governments, utilities, and extractive industries with certain property rights. An easement permits the holder certain rights regarding the land for specified purposes while the ownership of the land remains with the private property owner.

What is a conservation easement?

A conservation easement is designed to exclude certain activities on private land, such as commercial development or residential subdivisions. Its primary purpose is to conserve natural or man-made resources on the land. The easement itself is typically described in terms of the resource it is designed to protect (e.g., agricultural, forest, historic, or open space easements).

The easement is a legally binding covenant that is publicly recorded and runs with the property deed for a specified time or in perpetuity. It gives the holder the responsibility to monitor and enforce the property restrictions imposed by the easement for as long as it is designed to run. An easement does not grant ownership nor does it absolve the property owner from traditional owner responsibilities, i.e. property tax, upkeep, maintenance, or improvements.

What does an agricultural easement cover?

An agricultural easement is a specific type of conservation easement, designed to protect land from development and insure that the use of the land will remain conducive to agriculture in the future. Agricultural easements are designed to meet the needs of the property owner. They may include provisions for limited development for buildings such as barns, and housing for children and grandchildren who wish to stay on the farm. They may exclude certain sections of the farm from the easement entirely. As with other types of conservation easements, agricultural easements basically limit or prohibit the land from being developed for residential or industrial purposes regardless of who owns the land in the future.

What are the tax implications of conservation easements?

If an easement is granted in perpetuity as a charitable gift, some federal income and estate tax advantages usually accrue. These tax savings may be substantial, and are often cited as a major factor in landowners' decisions to donate easements. The 1997 federal tax law specifies estate easement donation options for farms within 25 miles of a metropolitan area. Property tax benefits are state and locally determined and may vary. Contact an attorney knowledgeable about land-use law for specific tax implications.

Who can grant a conservation easement?

The owner of the property is the only one who can decide to place a conservation easement on his or her property. When a property is owned by several individuals, all owners must agree to place the easement. If the property is mortgaged, the mortgage holder must also be in agreement for the easement to be placed. A conservation easement is a voluntary land-protection tool that is privately initiated.

Who holds the easement?

A conservation easement is designed to protect a property according to the owner's wishes. Since the easement is generally granted in perpetuity, it is necessary for an outside party to be responsible for

the monitoring and maintenance of the easement. The outside party "holds" the easement and is required to monitor and enforce the adherence of current and future property owners to the terms of the easement.

Typically, easements are held by local government agencies, land trusts (see OSU Extension Fact Sheet, Land Trusts, CDFS-1262-98) or other nonprofit organizations designed to hold them. Since the monitoring and maintenance of easements requires personnel inputs in perpetuity, easement donors often are required to provide financial support for the easement if it is held by a nonprofit organization. Designating both a government agency and a nonprofit or land trust as co-holders of the easement is an alternative selected in many easements and may be required in certain public programs wherein the easements are purchased by a government preservation program or organization.

Is land under a conservation easement considered public property?

The easement can restrict or permit certain public uses of the land. An easement does not have to permit public access at all. The decision to allow public access is left to the individual property owner who places the easement on the property. It is important to emphasize that land covered by a conservation easement is still privately held land, with the only restrictions on land use being those desired by the owner who places the easement on the property.

Certain government initiated easement programs may require some public accessibility in order to meet tax requirements so it is necessary to investigate the public access requirements before writing the easement.

What are the responsibilities of the easement holder?

Whether the easement holder is a public or nonprofit organization, the holder has the responsibility to enforce the requirements stipulated in the easement. This responsibility generally includes:

- a. Establishing baseline documentation through ensuring that the language of the easement is clear and enforceable, developing maps, property descriptions and baseline documentation of the property's characteristics.
- b. Monitoring the use of the land on a regular basis. This may require personal visits to the property to ensure that easement restrictions are being upheld.
- c. Providing information and background data regarding the easement to new or prospective property owners.
- d. Establishing a review and approval process for land activities stipulated in easement.
- e. Enforcing the restrictions of the easement through the legal system if necessary.
- f. Maintaining property/easement related records.

Where can I get more information about conservation easements?

American Farmland Trust, 1920 N St. NW, Suite 400, Washington, DC 20036 phone 202-659-5170

Land Trust Alliance, 1319 F St. NW, Suite 501, Washington, DC 20004 phone 202-638-4725

Trust for Public Land, 116 New Montgomery St., 4th Floor, San Francisco, CA 94105 phone 415-495-4014

Where can I read about conservation easements on the World Wide Web?

<http://www.farmland.org>

<http://www.olympus.net/community/saveland/qanda.html>

References

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