



Planning Implementation Tools Conservation Easements



Center for Land Use Education

www.uwsp.edu/cnr/landcenter/

August 2006

TOOL DESCRIPTION

A conservation easement is an incentive-based legal agreement voluntarily placed on a piece of property to restrict the development, management or use of the land in order to protect a resource or to allow the public use of private land as in the case of a trail or water access.

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 as well as harvest the vegetation on it and the minerals on or under it. A conservation easement involves the voluntary selling or gifting of one or more of these rights from the landowner to a public agency, land trust or an historic preservation organization. The easement is a legally binding agreement that is recorded with the county and runs with the property deed usually in perpetuity. It gives the holder of the easement the responsibility to monitor and enforce the property restrictions or use imposed by the easement for as long as it is in effect. An easement does not grant ownership nor does it eliminate the property owner’s traditional responsibilities, i.e. property tax, upkeep, maintenance, or improvements. An easement does necessarily permit public access but it may be required as a condition of certain funding sources or programs.

COMMON USES

Resource protection

An easement can be designed to protect land from development or degradation. Some examples of natural areas that can be protected by an easement include open space in subdivisions, green corridors, riparian buffers and wildlife habitat. In the case of farmland, it can ensure that the use of the land will support agriculture in the future. It may include provisions for limited development of accessory buildings such as barns and housing for family and workers. Certain sections of the farm may be excluded from the easement entirely.

Public Access

Easements can be used to preserve land for recreation trails and public access e.g. a path to a river for fishers or a canoe/kayak landing or land for the Ice Age Trail.

Possible Uses

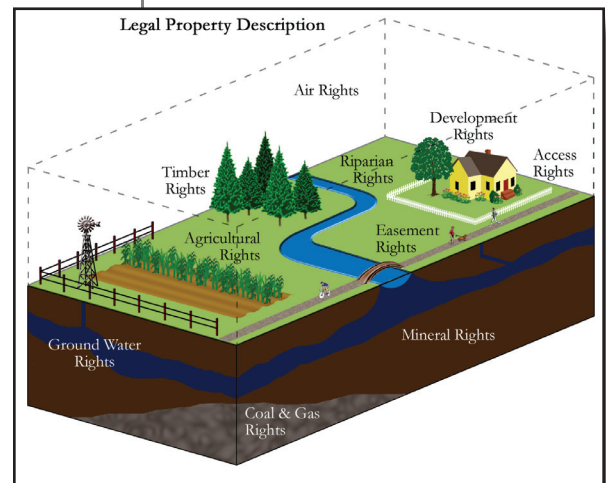
Preservation of:

- ◆ Forests
- ◆ Wetlands
- ◆ Farms and ranches
- ◆ Natural habitats and ecosystems
- ◆ Beaches
- ◆ Scenic areas
- ◆ Historic areas and buildings
- ◆ Land to improve surface water quality or ground water recharge

Creation of:

- ◆ Outdoor recreation and education areas
- ◆ Trails
- ◆ Public access

Figure 1: Any one of the rights associated with property ownership may have value and can be sold or donated separately from the rest.



IMPLEMENTATION

CREATION

There are three parts to recording a conservation easement:

1. Connect a buyer or donee with the seller or donor: If the effort is landowner-initiated, he or she will need to find an organization or agency willing and able to hold the easement. If an agency or organization identifies the property for a potential easement, they will need to work with the landowner to gain interest in the program. The easement can be held by a public or qualified nonprofit organization.
2. Define the parameters of the easement. The boundary (land or structures) of the easement must be defined as well as the specific restrictions and allowances the easement will impose on future use of the property. If an easement donor wishes to claim tax benefits for the gift, he or she must donate it or sell it for less than fair market value to a public agency or to a conservation or historic preservation organization that qualifies as a public charity under Internal Revenue Code Section 501(c)(3). Finally, an endowment fund may need to be set up for long-term maintenance of the property.
3. Legally record the easement. A conservation easement must be recorded in the county where the property is located.

ADMINISTRATION

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

- a. Establishing baseline documentation including maps and a description of the property's characteristics at the time the easement is recorded.
- b. Monitoring the use of the land on a regular basis. This may require personal visits to the property to ensure that the terms of the easement 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 uses allowed by the easement.
- e. Enforcing the terms of the easement through the legal system if necessary.
- f. Maintaining property/easement related records
- g. Ensuring that there is an adequate endowment for management and legal defense.

What is the difference between Purchase of Development Rights (PDR) and conservation easement?

As the name implies, Purchase of Development Rights (PDR) refers to the act of or a program designed to buy development rights from landowners for some community benefit. But, conservation easements can also be recorded between landowners and a local land trust or agency without necessarily being part of a PDR program. The rights can be sold or donated.

Report Card: Conservation Easement

Cost	Money or staff resources required to implement tool.
C	Costs depend on whether the easement is donated or purchased, though upfront transaction costs (environmental assessment and land appraisal) can be substantial even for donated easements. An organization volunteer or community staff person will need to work with the landowner to set up the easement. Legal assistance will be needed for drawing up and filing the legal document. Once a conservation easement is recorded, the ongoing costs are usually the responsibility of the easement holder.
Public Acceptance	The public's positive or negative perception of the tool.
A	This tool is well accepted because it is voluntary and landowners maybe compensated through income and/or estate tax benefits or cash payment. It provides a cost effective means of meeting preservation goals.
Political Acceptance	Politician's willingness to implement tool.
A	Politicians like this tool because the easement is voluntary and doesn't take land off the tax roles.
Equity	Fairness to stakeholders regarding who incurs costs and consequences.
A	This tool is seen as equitable because the landowner voluntarily donates or sells the land rights in exchange for meeting resource management goals.
Administration	Level of complexity to manage, maintain, enforce, and monitor the tool.
B	The complexity comes in the negotiations with individual landowners, the appraisal process, the creation and tracking of land records, and the regular, long-term monitoring of easements.
Scale	The geographic scale at which tool is best implemented.
Site to Regional	Easements are placed on individual land parcels. They can be drafted to work with small and large parcels, and can be tailored to each property. They can be used on site to regional scales, but since they are voluntary, it may be difficult to link them together on a large scale.

GRADING EXPLANATION

A - Excellent
B - Above Average

C - Average
D - Below Average

F - Failing

WISCONSIN EXAMPLES

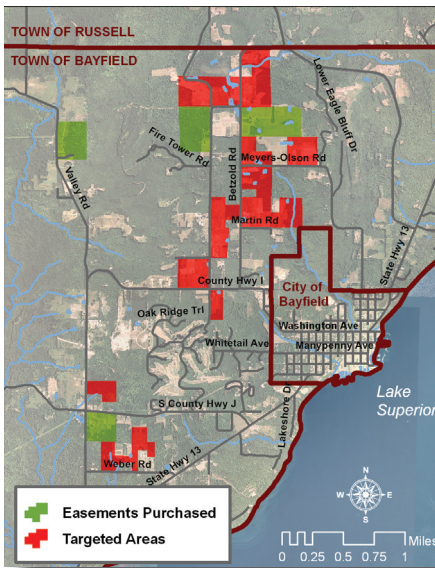


Figure 2: Map of Bayfield program to protect local orchards

Town of Bayfield Farmland Protection Program

The Town of Bayfield is using conservation easements to help protect its orchards and berry farms from the pressures of housing and tourism development. Protecting remaining productive farms and related rural character are top priorities in the Town's comprehensive plan. The microclimate of the Lake Superior ridge lands and the special soils required for fruit production make these remaining farms especially unique and valuable. The farms and orchards contributes over \$1million to the local economy and are a major tourist magnet.

The Town of Bayfield, in partnership with the Bayfield Regional Conservancy, purchases and administers the conservation easements. Suitable properties are selected based on a set of criteria defined by the Town Board of Supervisors. Funding for the program comes from grants (50%), town funds (30%), and donations from foundations and private donors (20%). Additional information is available at <http://www.breland.org>.

La Crosse Blufflands Protection Program

The City of La Crosse and the Mississippi Valley Conservancy, a local nonprofit land trust, signed a formal agreement to join together to protect the community's blufflands for natural, scenic, and recreational purposes. During the City of La Crosse's comprehensive planning process, local citizens cited bluffland preservation as a top concern in the community. The Conservancy will be the "broker" for the program, working with landowners to purchase both lands and easements in the blufflands overlooking La Crosse. Funding for the program comes from city approved funds, grants from the Wisconsin Stewardship Program and local foundations and donors. Additional information can be found at <http://www.mississippivalleyconservancy.org>.

FOR MORE INFORMATION

Arendt, Randall (1996). *Conservation Design for Subdivisions*. Island Press, Washington, DC.

Byers, Elizabeth & Ponte, Karin Marchetti (2005). *The Conservation Easement Handbook, 2nd Edition*. The Trust for Public Land and the Land Trust Alliance with the assistance of The National Trust for Historic Preservation and Scenic America.

Gathering Waters Conservancy. *Land Protection Fundamentals, Conservation Easements*. Available at www.gatheringwaters.org/landprotection_options_easements.php.

ACKNOWLEDGEMENTS

Document prepared by Douglas Miskowiak and Linda Stoll, 2006. CLUE gratefully acknowledges all external reviewers. Design and layout by Robert Newby. Figure 1 prepared by Rebecca Brown. Figure 2 prepared by Douglas Miskowiak. Data for Figure 2 was supplied by WDNR and Bayfield Co.

This document is part of CLUE's collaboration with the USDA, NRCS, GEM, and UWEX, entitled, "Partnership for Community Planning – Models for Land Use Education, Planning, and Management."