

Conservation Easements

No. 6

Obed Watershed Community Association

April 2006

About Conservation Easements

Conservation easements are designed to preserve existing or limit future uses of land, serving as one of the most powerful and effective tools available for the conservation of private lands. Their use has successfully protected millions of acres of wildlife habitat and open spaces and hundreds of miles of rivers, all while keeping property in private hands and generating significant public benefits.

Some of the most ecologically significant lands and waters in the country are those found in rural and agricultural landscapes. In Tennessee, easements have helped preserve family farms and protected forested areas from development. Our state currently has more than 13,000 acres under conservation easement. At the same time, more than 18,000 acres of TN farmland have been lost to development between 1992-1997.

Private Benefits of Conservation Easements

- A legal instrument that allows landowners to voluntarily restrict the ways in which a designated parcel of land can be used.
- A way for landowners to control the future use of their property.
- Landowners can receive property, income, and estate tax benefits from granting an easement.
- Landowners can retain the right to use their land for agriculture or forestry, rights that can be transferred to future owners of the property.
- Landowners can retain limited development rights, such as the right to erect one or more houses or other structures on the property.
- Landowners have the knowledge that the land they love will not be paved over.

Public Benefits of Conservation Easements

- Protect water quality.
- Conserve wildlife habitats
- Preserve open space.
- Preserve farmland and timberland
- Maintain character of rural communities
- Buffer public lands
- Maintain landscapes for tourism
- Require less in public services, generate more in local revenues

How Conservation Easements Work

Easements: An easement is a commonly used legal instrument that grants a right over a particular parcel of real property to someone other than the owner of the property. Easements are based on the idea that property ownership is not a single indivisible right but instead a collection of individual, often separable rights. These individual rights include the right to erect structures, reside, timber, grow crops, and exclude others from the property. The severance of a right can occur voluntarily as in the case of a conservation easement or involuntarily as when a utility or government exercises the power of eminent domain.

Conservation easements are created through either a voluntary sale or donation from a landowner to a government agency or other qualified organizations. The organization that receives the easement obtains the right and obligation to enforce the easement's restrictions on both current and future owners of the property. Conservation easements do not require public access or use of the land by the land trust that receives the easement unless specifically stated in the easement.

Land Trusts

Origin: Land trusts are nonprofit organizations that hold property or interests in property in trust for the public good. The first land trusts formed in the 1890s in northeastern urban centers, initially operating much like private park commissions, acquiring land for public recreation and enjoyment. By the 1950s, the nation had only 50 land trusts concentrated in the northeast and along the Pacific coast. Since the 1960s, the number of trusts increased, but they still protected land through outright ownership, acquiring property by donation or purchase. During the 1980s, land trusts developed conservation easements, substantially increasing the rate at which land is being protected across the country.

TN Conservation Easement Act of 1981: The act authorizes state governmental agencies to acquire conservation easements and specifics how conservation easements are to be enforced and how they are to be assessed for property taxes. At the federal level, the tax code has been amended most recently by the Taxpayer Relief Act of 1997 to increase the incentives for conservation easements.

Advantages of Conservation Easements to Land Trusts: Conservation easements allow land trusts to protect land, not by purchasing land but by acquiring only those specific rights that are relevant to the trust's conservation goals. In general, these rights are the right to *develop* the land in the future or the right to convert the land to a more intensive use, such as a farm to a subdivision or shopping mall. Since landowners are more willing to sacrifice the right to develop their land than all of their rights to the land, conservation easements allow land trusts to preserve more lands with fewer resources.

Contributions to Support Land Trust: Generally, land trusts do not charge a fee for holding a conservation easement, but they do ask landowners to consider the costs the land trust incurs during the process of establishing an easement and then in the ongoing monitoring of the easement. Each project requires staff time, phone, travel, and office expenses. The land trust must always be prepared to defend an easement against any legal challenges that may arise. Landowners often make a contribution to the land trust at the time of establishing an easement.

Legal Implications

Restrictions Legally Binding: Conservation easements are legally binding, voluntary agreements between landowners and a land trust or a government agency, designed to restrict the type and amount of development that can occur on a parcel of land. The landowner gives these rights to an easement-holding entity which then has the right and obligation to monitor and enforce the restrictions. The restrictions apply to both current and future owners.

Extinguishing Rights: Instead of transferring rights as other easements do, conservation easements actually extinguish these rights. The landowner retains all rights not explicitly transferred or

extinguished by the easement.

Flexibility: Landowners and land trusts have a great deal of freedom in choosing exactly which rights are extinguished by the easement, allowing each easement to be tailored to the particular circumstance of the landowner. Easement can either be permanent or last only for a specific period of time.

Limits to Flexibility: Less restrictive easements are less likely to qualify for tax incentives. Land trusts are less likely to be interested in participating in less restrictive easements due to the costs of monitoring and enforcement of land with little public benefit.

Access to Property: While conservation easements need not grant public access to the property, TN law does provide that the land trust holding the easement has the right of entry at reasonable times for inspection.

Continuing Rights of Landowner:

- The right to sell the property. The new owner(s) must conform to all terms of the conservation easement permanently.
- The right to farm or manage the timber.
- The right to hunt or to restrict hunting.
- The right to transfer the land to heirs.
- The right to restrict public access. Physical access is not required for “scenic enjoyment. Visual access is enough.

Continuing Responsibilities of Property Owners:

- Must still pay property taxes.
- Liability for any property damage or injury to persons resulting from the lack of care and maintenance of the property.

Tax Benefits

Lowering of Property Tax: Property taxes are based upon the assessed value of the property which represents the property’s fair market value. The market value of a farm or forested land near developing or urban areas may exceed that for its current use, and the assessed value is in general based on the higher value. By granting a conservation easement, the landowner forecloses the possibility of the land being converted into this alternative use and by law the assessed value reflects the loss of development value. Thus, the property tax savings from conservation easements will be greater for lands that are near developed or developing areas and with greater restrictions on development.

Green Belt Laws: The tax savings from conservation easements will be less if the property already qualifies for differential assessment. Green Belt laws direct tax assessors to assess land that qualifies as agricultural, forest, or open space at its current use value rather than its fair market value.

Donation: The IRS considers the donation of a conservation easement or its sale for less than its market value as a charitable contribution and a tax deductible item within the existing code. The IRS requires that the conservation easement must be permanent and must yield significant public

benefits through protection of a viewscape, natural habitat, historic areas, and outdoor public recreation. The donation and sale can also have estate tax benefits.

Steps Toward a Conservation Easement

- **Research:** Study on your own or get professional guidance to help sort through the financial and legal issues.
- **Choose the Receiving Entity:** The landowner needs to find a government agency or a qualified organization willing to purchase or accept a donation of the conservation easement. Not all organizations may want to protect a particular land parcel, depending on its size, location, and overall benefit to the public.
- **Compile a Baseline Inventory.** The baseline inventory includes a title search and possibly a survey of the property, as well as a description of both the current uses of the property and the resources that the conservation easement would protect. The inventory sets a reference point for determining compliance with the easement terms.
- **Negotiate and Draft the Easement:** The landowner and land trust need to agree upon which property uses are to be allowed. Landowners should make sure that the easement does not prohibit them from using the land in ways they want.
- **Execute and Record the Documents.** To be enforceable and to qualify for tax incentives, a conservation easement must be executed by all current owners of the property and recorded in the county in which it is located. If the land is subject to a mortgage or deed of trust, those holders must consent in writing to the conservation easement and such consent must be recorded.
- **Obtain an Appraisal of the Property.** To qualify for certain tax benefits, the effect of the conservation easement on the value of the property must be established by an appraisal.

Costs to Landowners

- An appraiser to determine the value of the conservation easement.
- An attorney to review the land trust's draft conservation easement, consultation, and verification of clear land title.
- Accountant or attorney to review tax benefits.
- Surveyor costs.

Possible Sources of Funding

Bargain Sales: Most conservation easements are either donated or transferred via a *bargain sale* at a price below the value of the extinguished development rights.

USDA: The USDA States Department of Agriculture provides funds for the purchase of conservation easements through the Farm and Ranch Lands Protection Program (contact Natural Resources Conservation Service) and the Forest Legacy Program (contact the TN Division of Forestry.)

Resources: "Farm and Forest Land Preservation with Conservation Easement (UT/Extension SP646), "Landowner's Options," TN Parks and Greenways Foundation; "Conservation Easements in TN," TN Nature Conservancy; Land Trust for Tennessee.

The Obed Community Association has as its purpose community appreciation and volunteer involvement in ongoing research of the natural and cultural heritage of the Obed River watershed within Cumberland County. Louise Gorenflo, OWCA director, produced this fact sheet. Those wanting to join this membership organization or more information may contact OWCA at 484-2633 or at 185 Hood Drive, Crossville, TN 38555.