

Using Conservation Easements to Preserve Open Space

.....

A Guide for Pennsylvania's Municipalities

by

Debra Wolf Goldstein, Esq.

General Counsel

Heritage Conservancy



Acknowledgements

We are grateful for the assistance of the following individuals who reviewed this guide and offered suggestions for its improvement:

Dick Sprenkle, Pennsylvania Department of Conservation and Natural Resources

Larry Williamson, Pennsylvania Department of Conservation and Natural Resources

Greg Gove, Pennsylvania Department of Conservation and Natural Resources

Mike Schneider, Pennsylvania Department of Conservation and Natural Resources

Andy Loza, Pennsylvania Land Trust Association

Jay R. Goldstein, Esq.

Michael Frank, Heritage Conservancy

Dulcie Flaharty, Montgomery County Lands Trust

This guide was funded with grants from the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation, and the William Penn Foundation.

This guide is for general information only and is not intended to provide legal or tax advice. Laws may be amended or court rulings made that could affect the information provided in this guide. Heritage Conservancy and the funders assume no responsibility for errors and omissions or any liability for damages resulting from use of this material.

Copyright © 2002, Pennsylvania Department of Conservation and Natural Resources, all rights reserved.



Using Conservation Easements to Preserve Open Space

.....

A Guide for
Pennsylvania's
Municipalities



by
Debra Wolf Goldstein, Esq.
General Counsel
Heritage Conservancy
85 Old Dublin Pike
Doylestown, PA

Table of Contents

Introduction	4
Part I: All About Easements: An Overview	5
What Is a Conservation Easement?	5
Calculating the Value of an Easement	5
Rights Typically Retained by Landowners	6
Restrictions Typically Placed on Properties	6
Public Access May Not Be Required	7
Landowner Liability May Be Limited	7
How Easements Are Monitored and Enforced	8
Costs to Establish and Manage Easements	8
Frequently Asked Questions	9
Easements: Pros and Cons	12
Part II: Steps in Acquiring Easements	13
Qualified Appraisal	14
Sales Agreement	14
Baseline Documentation	14
Title Search	14
Mortgage Subordination	15
Environmental Assessment	15
Drafting the Easement Document	15
Survey	16
Stewardship Fund	16
Settlement	17
Publicity	17
Part III: How Municipalities Can Help	
Municipalities Can Acquire and Fund Easements Themselves	18
• Local Taxing Options	18
• Required Planning Steps	19
Municipalities Can Work With Land Trusts	20
Easements Can Complement Municipal Regulations	22
Part IV: Financial Benefits of Easements	
Financial Benefits to Municipalities of Acquiring Easements	24
• Saving Land Saves Money	24
• Sources of Acquisition Funding	25
Financial Benefits to Landowners of Granting Easements	25
• Income Tax Benefits	26
• Estate Tax Benefits	28
• Property Tax Benefits	29
Part V: Easement Stewardship	
Monitoring the Easement	30
Enforcing the Easement Restrictions	31
Appendix A: Outline of a Typical Conservation Easement	32
Appendix B: The Pennsylvania Conservation & Preservation Easements Act	34
Appendix C: School District and Municipal Resolutions	36
Appendix D: Where to Get More Help	38

Introduction

Pennsylvania's rolling farmland and beautiful open spaces are being devoured by development. In *Save Our Land, Save Our Towns*, Pulitzer Prize-winning author Tom Hylton reports that, since the 1950's, Pennsylvania has lost more than four million acres of farmland, an area larger than Rhode Island and Connecticut combined. In less than two generations, "sprawl has covered over thousands of acres of prime farmland, despoiled once-beautiful landscapes, and chopped up pristine woodlands. It has blighted our surroundings with massive highways and parking lots." A recent survey of municipalities conducted by the southeast regional office of the Pennsylvania Department of Environmental Protection found that "Land Use/Open Space" ranked as the number one issue of concern.

Responding to the problem, municipal leaders are conducting park, recreation and open space studies and creating environmental advisory councils to study conservation issues. Some municipalities have taken a fresh look at how they handle the subdivision and land development process and have updated their zoning and planning codes.

But studies and government regulations can only go so far. The land preservation "clock" is ticking in many communities, with farmers and large landowners receiving solicitation letters from developers on a weekly basis. **Direct land protection – by the municipality itself or by concerned environmental groups working in concert with local government – is the most proactive, and often the best, course of action.**

Unfortunately, there rarely is enough public or private funding to buy outright all the land a municipality might want to protect. **And if the goal is preservation of scenic vistas, farms, and woodlands, there is no real need for municipalities to own the underlying land.**

Conservation easements, the subject of this guide, are a land-saving tool that stretches the open space dollar. Easements keep land on the municipal tax rolls, can be tailored to the specific needs of the municipality and landowner, and are completely voluntary on the part of the landowner. They are a legally sound and time-tested method of land preservation. Easements can be used to protect scenic vistas from being blocked, save farmland, and preserve and buffer streams. Recent changes to federal, state, and municipal laws have made use of conservation easements even more appealing and straightforward.

Whether the municipality itself chooses to purchase and accept conservation easements; whether it prefers to co-hold easements or be the "silent partner" working in conjunction with a land trust; or whether it chooses merely to inform its institutional and individual landowners about alternatives to wholesale development, learning about conservation easements has never been more important.

This guide is designed to provide Pennsylvania's municipalities and their advisory groups, such as environmental advisory councils and open space committees, with an overview of conservation easements. For additional, detailed information on the tax and legal aspects of easements, please refer to the publications listed in Appendix D, "Where to Get More Help."

All About Easements: An Overview

What Is a Conservation Easement?

A **conservation easement is a written legal agreement between a landowner and a government entity or land trust** (a private, non-profit conservation organization) that permanently restricts a property's uses to protect its conservation values.

Landowners own many rights associated with their property, such as the rights to harvest timber, build structures, and so on. Each of these rights has a monetary value that can be established by real estate appraisers and is recognized by the Internal Revenue Service ("IRS"). When landowners (also called "grantors" or, in some cases, "donors") donate or sell an easement to a land trust or municipality (also called "grantees" or "easement holders"), **they continue to own the eased property and pay taxes on it**, but they permanently give up certain, agreed-upon rights.

Compare: When landowners convey property in "fee simple," they transfer *all* of the ownership rights.

For example, the landowner might give up the right to build additional houses, while retaining the right to harvest crops. If the landowner has children who may want to live on the property in the future, or if landowner is not willing to give up all future building rights on the property, an easement could "carve out" from the development restrictions a limited number of building lots that could be built on in the future. Under this limited (or "conservation-based") development scenario, easements would be placed on the most scenic and environmentally delicate areas. Alternatively, the easement could be written to restrict only a portion of the property. The easement also might require the landowner or the easement holder to *take* certain actions, such as restoring a stream bank or removing invasive vegetation.

Future owners will be bound by the terms of the easement, which is recorded at the county court house. The holder of the easement takes on the legal responsibility and right to enforce the easement. If a future owner or other person violates the easement – perhaps by building a structure the easement does not permit – the easement holder will work to have the violation corrected, in court if necessary.

Calculating the Value of an Easement

Because eased property cannot be fully used or developed as zoning would otherwise allow, its market value is lessened (which may lower the assessed value of the property, with positive tax consequences for the owner). The easement holder may fully or partially compensate the landowner for this reduction in value (through the easement purchase price); or the landowner may choose to "donate" the reduction in value to the grantee. As long as certain IRS requirements are met, the reduction in market value attributable to a donated easement may be considered a charitable donation that makes the landowner eligible for a federal income tax deduction and estate tax benefits. (More on this in Part IV.)

*Easements are
extraordinarily
flexible
land-saving
tools.*

Rights Typically Retained by Landowners

As noted above, the landowner continues to own the land conserved by an easement and retains many rights of use. An easement document might specify, for example, that the owner reserves the right to:

- engage in agricultural production;
- build barns, sheds, and other farm structures;
- use, maintain, and expand an existing residence;
- manage woodlands for timber production or conduct a Christmas tree operation; and/or
- subdivide the land and construct one or more additional residences in agreed-upon areas or “building envelopes” (see Figure #1).

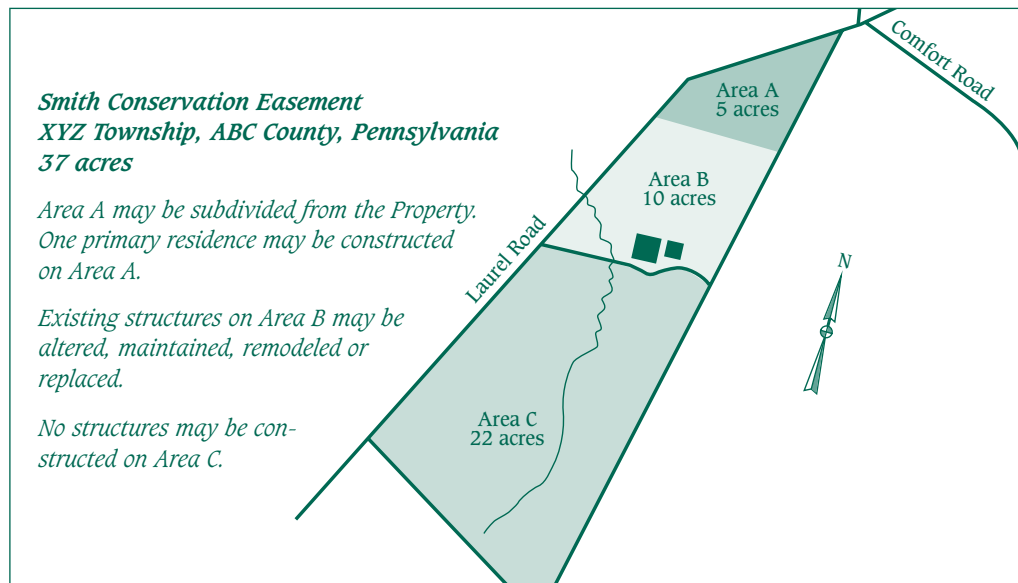


Figure #1

The landowner should be aware that if the retained development rights are too substantial, the IRS may disallow a federal income tax deduction on the basis that the easement does not advance a legitimate conservation purpose.

Restrictions Typically Placed on Properties

A landowner's use of property conserved by an easement might forbid or limit:

- excessive signage;
- commercial, industrial, and mining activities;
- new buildings, except for those specifically negotiated in advance;
- subdivision; and/or
- commercial recreational use (this prohibition is required to obtain federal estate tax benefits).

Each of the restrictions and reserved rights is negotiated and agreed upon before it is included in the easement document.

Public Access May Not Be Required

Easements do not open property for public use. Public access is granted only if the landowner and grantee agree to this and state it in the easement document. Public access could be permitted for a wide variety of recreational uses, or it could be limited to specific uses such as a hiking or equestrian trail or environmental education visits. Because the purpose of municipal conservation easements is generally open space protection rather than creation of recreational amenities (trail easements excepted), many do not provide for public access.

As noted in more detail in Part IV, easements designed to protect farmland, scenic vistas, or wildlife and plant habitats do not require public access to be tax-deductible. On the other hand, IRS regulations require that easements donated for recreational or educational purposes allow public access.

Municipalities should be aware that the Pennsylvania Department of Conservation and Natural Resources (“DCNR”) Community Conservation Partnership grant program and many county grant programs may require some degree of public access on properties acquired with public funds. The type of access acceptable to these funders is varied, but may include environmental education visits to the property by designated organizations or limited public hunting and fishing.

Landowner Liability May Be Limited

If the easement provides for even limited public access, landowners may be concerned about their potential liability to people who are injured while on the property. Municipalities should make landowners aware that **the Pennsylvania Recreation Use of Land and Water Act** (68 Pa. Stat. Ann. §477-1 et seq.) **protects landowners in many situations, reducing the standard of care they would otherwise owe to easement users so long as they make their land available free of charge to the public for recreational purposes.**

Where the Act is applicable (courts have interpreted the Act to cover only “undeveloped” land), landowners owe no duty to keep their premises safe and are immune from lawsuits claiming that they were negligent. Landowners will be liable only for their “willful or malicious” failure to guard or warn of dangerous conditions. (See the article on the Recreation Use of Land and Water Act, listed in Appendix D.)

Municipalities occasionally may want to ask landowners for easements to use portions of their properties for trail purposes. This type of arrangement generally is successful only when the local government indemnifies landowners for potential liability issues. Trail easements typically specify that the county or local park department is responsible for managing and maintaining the trail. The easement will set forth limitations on the public’s use of the trail, for example forbidding motorized vehicles, alcohol, and use after dark.



The Recreation Use of Land and Water Act can help protect landowners from liability.

A trail easement allows for public access in specified areas only. If users come onto the trail or easement area legitimately, but then step off into private areas, the user may be considered a trespasser. From a liability perspective, landowners owe trespassers on their land neither a duty to keep the premises safe nor a duty to warn of dangerous conditions existing on the property. The trespass concern should be kept in mind when designing the trail. Providing an adequate number of public parking spots and public access points minimizes trespassing on private property. Also, the easement can specify that the municipality will pay for and erect whatever barriers are necessary to keep trespassers out, including signs, landscaping, and fences. (For a model trail easement see *Community Trails Handbook*, listed in Appendix D.)

How Easements Are Monitored and Enforced

As explained in more detail in Part V, after the parties agree upon the terms and restrictions of the easement, and after the easement has been legally executed and recorded in the county courthouse, the easement holder will visit the property on a periodic basis – usually annually – to ensure that the landowner is complying with the terms of the easement. Many easements are written to require advance notice to the landowner of the date and time of monitoring visits. If a violation is discovered during the visit or otherwise, the grantee will contact the landowner in an effort to correct the problem. If the violation cannot be corrected through mediation, the grantee may initiate legal action to enforce the easement.

Costs to Establish and Manage Easements

Acquiring, managing, and even donating a conservation easement involves short and long-term costs on the part of the landowner and the easement holder. As detailed in Part II, there are:

- 1) costs to create and acquire easements (e.g., purchase price, legal fees, staff time, base-line documentation, appraisal, survey, title report, title insurance, environmental assessment, recording fees, and stewardship fund);
- 2) costs to manage easements (e.g., staff time to monitor eased property on a regular basis, prepare reports, and communicate with landowners); and
- 3) costs to enforce easements (e.g., staff time working with landowners to correct easement violations, and hiring legal counsel, if necessary).

The items in categories (2) and (3) above generally are part of the easement holder's costs of "doing business." Before accepting a conservation easement, a municipality needs to decide how to cover these operating expenses, which may cost up to several hundred dollars per year. (As noted in Part II, most land trust easement holders cover these costs by requiring a contribution to a stewardship fund that will generate income sufficient to cover anticipated yearly expenses.)

Who pays for the costs in category (1) above often is negotiable. If the easement is being donated, the municipality may decide to subsidize certain transaction costs, such as appraisal and survey, which might otherwise be the landowner's responsibility. Purchase price aside, the "hard costs" associated with an easement acquisition may be several thousand dollars, depending on the location and the complexity of the transaction.

Frequently Asked Questions

Why would landowners voluntarily restrict their property rights?

The primary reason is that they love their land. Although *they* might be responsible stewards of their property, they generally have no control over what subsequent owners will do with the site. Easements permit these conservation-minded landowners to control how the property will be used in perpetuity, no matter who the future owners are.

Another important reason that landowners turn to conservation easements is that donations, bargain sales, or bequests of easements can have beneficial tax consequences. In some cases, sale of a conservation easement nets the landowner the same amount as selling to a developer AND helps keep the land in the family.

Why not ask the landowner to deed restrict the property instead?

Landowners can insert restrictions into their property deeds that purport to limit future uses. However, placing a deed restriction on a parcel only is effective if there will be someone present in the future who is legally authorized – and willing – to monitor and enforce the restrictions. If the current owner wants to go to the trouble of designating (and funding) a future monitor to enforce the deed restrictions, it is advisable to place a conservation easement on the property and obtain an easement's tax benefits and legal protections.

How does the public benefit if public access is not allowed?

The benefit to the public of *privately*-owned, protected property is indisputable. In the most recent statewide Recreation Participation Survey, Pennsylvanians listed their top recreation activity as sightseeing/driving for pleasure. Easements can provide this visual relief. Easements also can protect wildlife corridors, maintain a sense of community, combat sprawl, assist in farmland preservation, and maintain high quality water sources. Easements can be placed on private land surrounding public parks to create visual and habitat buffer areas.

In short, saving open space can maintain a community's quality of life.

Studies show that preservation of open space makes sense for financial reasons as well. By keeping the land free from development, particularly residential development, the community avoids increasing taxes to pay for new schools and added municipal services. (More on this in Part IV.)

Saving open space can maintain a community's quality of life.

Can easements ever be changed?

Although easements technically may be altered or amended at a later date due to changed circumstances, amending a conservation easement should be done with extreme caution. Easement holders should develop written policies regarding when amendments will be permitted. Amendments that result in net conservation gain (e.g., increasing restrictions on the property) or are conservation-neutral (e.g., clarification of terms, boundary adjustments) are the only ones that should be considered. In addition to being unethical, IRS penalties await those who amend a donated easement in a way that increases the property value (say by restoring an originally prohibited right).

Parties also may choose to write a provision into the easement document clarifying when future amendment is permissible.

Can easements ever be terminated?

Although most conservation easements are granted to run “in perpetuity,” easements can be terminated under certain circumstances, many of which are not under the control of the grantor or grantee.

Easement restrictions may be terminated by condemnation of the underlying land by a government agency. IRS regulations require the easement document to address the distribution of proceeds that result from the condemnation.

Foreclosure of a pre-existing lien (e.g., mortgage, tax lien) on the property will extinguish the easement restrictions. For this reason, easement holders should always do a title search before accepting an easement. If the property is mortgaged, a subordination agreement needs to be obtained from the mortgage holder so that a later foreclosure will not terminate the easement.

The “doctrine of changed circumstance or conditions” also can affect the long-term viability of a conservation easement unless easement drafters are careful. This doctrine allows (future) landowners to argue that the restrictions on their land can no longer fulfill their original purpose because neighboring areas have changed so much from the time the easement was drafted. For instance, assume that the sole stated purpose of a particular easement were to provide a buffer area for a neighboring wildlife preserve, and that the preserve is closed forty years from now because the species it was designed to protect is gone. The doctrine of changed circumstances might be invoked to challenge the easement even though the property still possessed great scenic and open space value. Careful research and drafting of a property’s multiple conservation values can avoid this outcome. The easement document should also contain a provision specifically noting that as surrounding areas change or other uses become more economically beneficial, the purpose of the easement is not decreased.

A number of other possible ways an easement might inadvertently be terminated were remedied by the recent Conservation and Preservation Easements Act.

What is an agricultural conservation easement?

Conservation easements can have different names depending on which resource they protect. An easement designed to protect farmland might be called an agricultural conservation easement; an easement designed to protect the façade of an historic structure might be called an historic preservation or façade easement; and an easement acquired to preserve a scenic viewshed might be referred to as a scenic easement. All have similar components.

Like non-agricultural easements, the value of an agricultural conservation easement is determined by calculating the difference between the market value (i.e., the “highest and best use” under current zoning) of the property being eased versus its strictly agricultural value. Pennsylvania’s Agricultural Security Area Law (Act 43 of 1981) authorizes counties to set up programs to purchase easements from farmers who have joined an Agricultural Security Area that contains at least 500 acres. Easements purchased pursuant to the Agricultural Security Area Law are fairly uniform and contain specific language required by the statute.

Agricultural conservation easements that are not purchased pursuant to the Agricultural Security Area Law are still eligible to be assessed at the land’s restricted farmland value, under the Preserved Farmland Tax Stabilization Act of 1994.

The Agricultural Security Area Law was amended by Act 138 of 1998 to also authorize *municipalities* to buy agricultural conservation easements in Agricultural Security Areas. Local governments may co-hold easements with the county or state; or they may purchase easements on their own, which is particularly useful for farmland that does not meet the strict evaluation criteria used by the state and county programs. The law allows municipalities to incur debt to buy agricultural easements.

As a result of the above legislation and the efforts of counties and municipalities, Pennsylvania is a national leader in agricultural preservation. According to the American Farmland Trust, as of February 2001 the Commonwealth and its local governments had preserved 235,463 acres of farmland using almost \$506 million in public funding.



Easements: Pros and Cons

Pros

For the Municipality:

**Easements are flexible tools. They can be written to achieve specific township goals such as preserving scenic viewsheds along a country road.

**Easements are perpetual. The restrictions will remain in force even when the property changes hands.

**Easements can conserve scenic beauty and environmentally sensitive areas at a lower cost to the municipality than fee simple acquisition.

**Eased property remains on the tax rolls. Responsibility for maintaining the eased property typically remains with the landowner, yielding an additional savings to the municipality over fee simple acquisition.

**Easements may increase property values on surrounding tracts.

Pros

For the Landowner:

**Landowners can be assured that the eased portions of their property will be conserved forever.

**Easements remain in force even when political leadership and zoning ordinances change in the municipality.

**Placing a conservation easement on the property may significantly lower estate taxes. The tax savings could spell the difference between being able to keep the land in the family and needing to sell it to pay estate taxes.

**The easement may provide significant federal income tax benefits if the landowner donates the easement to the municipality or land trust (rather than selling it at fair market value).

**An easement may lower property taxes due to a reduction in the property's assessed value.

**The reduction in an eased property's market value may be partially made up for through money gained from sale of the easement and/or through tax savings. A combination of conservation easements and limited development on the property may well provide a net gain to the landowner equivalent to an outright sale to a developer who fully develops the property.

**Landowners can continue to live on their properties and may sell it or pass it on to heirs.

**An easement can be tailored to a landowner's particular needs (such as reserving three acres for a future residence for the landowner's heir).

Cons

For the Municipality:

**Although the public and potential sellers of real estate generally understand the fee simple acquisition process, taxpayers and landowners may have to be educated about how easements work.

**Establishing the easement involves up-front costs for an attorney or land trust staff to draft and review the easement; for a biologist to prepare the property's baseline documentation; for an appraisal and title search; and for a survey, title insurance, and an environmental assessment, if necessary.

**There are long-term costs to manage the easement (i.e., annual inspections and record-keeping).

**The easement holder is responsible for ensuring that easement restrictions are followed. If a violation is discovered, the holder is responsible for enforcing the easement terms, through legal action if necessary.

Cons

For the Landowner:

**There are short-term costs even to donate an easement, including appraisal and attorney fees. A stewardship donation may be requested if a land trust will be the easement holder.

**The landowner is choosing to give up certain development rights, which will lower the property's market value.

**Easement restrictions are permanent and bind all future owners.

Steps in Acquiring Easements

After discussions with the landowner have led to an agreement in principle regarding sale or donation of a conservation easement, the municipality – or a cooperating land trust – is ready to “do the deal.” Following is a brief overview of the steps involved in acquiring an easement. Municipalities will need to tailor, re-order, or delete certain steps to deal with each unique property and transaction. (See *Doing Deals: A Guide to Buying Land For Conservation*, listed in Appendix D, for further information.)

Qualified Appraisal

Whether the easement acquisition is a purchase or a donation, obtaining an accurate appraisal is essential. The landowner and the municipality purchasing the easement need to know what the property interests are worth. Often, both the landowner and the entity acquiring the easement will obtain their own appraisals. Only if the parties can reach an agreement on price does the transaction go forward.

If the landowner wants to claim a charitable tax deduction for donating an easement, the IRS requires the landowner to obtain a “qualified appraisal” to justify the value of a donation over \$5,000. A “qualified appraisal” includes: a description of the property, information on the appraiser’s qualifications, the valuation method used to determine fair market value, and a description of the fee arrangement between the appraiser and the donor. (Treasury Regulation §1.170A-13T(c)(1).) The appraisal must be performed by an appraiser who is “qualified to make appraisals of the type of property being valued” and who is “independent” of the donor and the easement holder. Appraisals performed for projects using DCNR funds require that a state-certified *general* (not *residential*) real estate appraiser be hired.

The appraiser also should be familiar with specialized regulations governing easement appraisal. For instance, in calculating the diminution in value of the eased parcel, the appraisal must take into account any financial benefit accruing to other parcels held by the same or related owners. Such a benefit could result, for example, when a prohibition against construction on parcel A serves to increase the property value of adjacent parcel B, owned by the sister of parcel A’s owner. Similarly, the appraiser and project manager should be aware of the appraisal policies of any government agencies that will be asked to provide funding to the project. Some agencies prefer that all structures be excluded from the area under easement (i.e., a “doughnut” approach to easement delineation), while others permit structures and building envelopes in the easement area so that these can be governed by the terms of the easement document (e.g., one residence – but no telecommunications tower – allowed within the building envelope).

Treasury regulations require that the appraisal be made not earlier than 60 days before the date of the gift. A summary of the appraisal must be submitted on IRS Form 8283 with the donor’s income tax return for the year of the gift.

Together with other reasonable expenses related to the donation (including legal and accounting assistance, survey costs, and recording fees), appraisal costs are tax deductible to the extent they exceed 2% of the donor’s adjusted gross income. (See *Appraising Easements*, listed in Appendix D, for more information.)

*“To know his
own nature,
man must have
nature around
him.”*
— Goethe

Sales Agreement

Between the time the parties come to an agreement and the time they are ready to acquire the easement, a title search must be completed, an environmental assessment may be ordered, and the grantee may need time to raise the purchase price. To document the parties' commitment during this period, which often can take several months, it is wise to have a written agreement prepared and signed by the parties. This agreement can take the form of a standard real estate sales contract, in which the easement buyer makes a deposit towards the purchase price. In other instances, the preferred agreement would be a letter contract requiring the landowner to reimburse the municipality for title and other costs should the landowner subsequently withdraw from the transaction.

Baseline Documentation

An analysis of the property's conservation values needs to be performed. This is an IRS requirement for landowners who intend to take a charitable tax deduction and a way for easement holders to conduct meaningful inspections in the future. The report – called “baseline documentation” – describes the condition of the property at the time the easement is placed on it and identifies the property's important resources and any threats to those resources. This analysis typically is conducted at the same time the easement document is being drafted, so that the restrictions and reserved rights can be tailored to protect the property's most important natural features.

The baseline documentation may include:

- a list of flora and fauna of interest;
- signed and numbered photographs of the property with photo points keyed to a map;
- topographic and soil maps; aerial photographs;
- a survey;
- a conservation plan illustrating agreed-upon building envelopes; and
- a management plan for the property's natural resources.

Land trusts typically have a conservation biologist on staff who prepares the baseline documentation, or an environmental consultant can be hired to perform this work. The cost of the report varies depending on the size of the property and the complexity of the reserved rights retained by the grantor.

Title Search

An entity acquiring a conservation easement should always do a title search to check for liens, encumbrances, or other problems with the property's title. Title information furnishes the legal property description that must be included in any land transfer document.

A title insurance policy is recommended for every purchased easement. Title insurance protects an easement holder from financial loss resulting from defects in the property's title, other than defects that are listed and excluded from the title insurance policy. Some grantees obtain title insurance for donated easements as well. The cost of title insurance usually is borne by the entity acquiring the easement.

Mortgage Subordination

If the property to be eased is subject to a pre-existing mortgage, and the lender ever forecloses and takes title to the premises, the conservation easement could be extinguished. The solution is either to have the landowner satisfy the mortgage at settlement or to ask the lender to record an agreement that subordinates its rights in the property to the rights of the easement holder. Subordination is required for the easement to be tax-deductible. Although it may take time to obtain the necessary approvals, most sophisticated lenders will agree to a subordination request, particularly if it gives the lender's right to collect on indebtedness under the mortgage priority over the easement holder's right to collect any monetary damages or costs.

Environmental Assessment

Environmental laws impose liability regardless of fault (i.e., "strict liability") on current owners of contaminated land, or on previous owners if the pollution happened during their ownership. The law is unclear regarding whether an easement holder (even one with no property management responsibilities) will be held liable for environmental clean-up costs, but it is certainly prudent to assume that this risk exists.

Environmental laws do provide "innocent" purchasers of polluted property with some protection from liability. In order to establish "innocence," the purchaser must show that it was diligent in assessing the land for contamination before acquisition. For every easement the municipality acquires, it first should thoroughly inspect the property (and view neighboring properties to the extent possible), review the property's (and neighboring properties') past uses, research public records and permits for indications of past problems, and document all steps taken in the investigation. These steps are considered a "Phase I" environmental assessment.

If the property inspection or the document review raises the slightest concern, or if the municipality does not want to undertake the necessary investigation itself, it is recommended that the Phase I be ordered from a qualified consulting firm. The Phase I report may recommend analysis of soil and water samples from the property. (This sampling would be called a "Phase II" assessment.)

The easement holder should have the right to walk away from the transaction if the environmental assessment uncovers problems that are unacceptable. The agreement of sale may include a due diligence clause granting the easement holder a set period of time to conduct investigations, as well as a provision delineating who will pay for any professional environmental assessments. Additionally, the easement document should include a provision indemnifying the grantee if it incurs expenses due to contamination, as well as representations and warranties by the grantor relating to the lack of contamination.

Drafting the Easement Document

After the terms have been negotiated, the easement document will list mutually agreed-upon use and development restrictions and will specify which parcels (or portions of parcels) are covered by those restrictions.

The challenge of drafting an easement document is to anticipate potential future uses and points of conflict and address them clearly. The easement document should be as specific as possible without alienating the landowner or creating a maze of restrictions that is impossible to enforce. (See “Outline of a Typical Conservation Easement” in Appendix A for provisions common in easement documents.)

If state or county grant funding is being used in the transaction, the agencies may require the easement document to include particular provisions or restrictions. The recently-passed Pennsylvania Conservation and Preservation Easements Act also requires certain provisions for the agreement to be enforceable as a conservation easement under the statute. (See Appendix B for an overview of the Conservation and Preservation Easements Act.) Lawyers for both the grantor and the grantee should review and approve the document. Land trust staff may be used to write the initial draft of the easement, but legal assistance at this point is essential. Laws and regulations are always changing, and only an attorney with experience in conservation easements can keep the parties up-to-date.

Survey

If the boundaries of the property are unclear or in dispute, or if grant funds are being used in the transaction, a survey may be required. A survey with permanent monuments also is highly desirable where building rights on portions of the property are retained by the donor. The Pennsylvania Conservation and Preservation Easements Act requires easement documents to contain a metes and bounds description of the eased area, unless the easement boundary can be referenced to an existing deed boundary or a natural or artificial feature such as a stream or railroad right-of-way.

The cost of a survey is dependent upon such factors as acreage, survey method, and property terrain.

Stewardship Fund

By accepting a conservation easement, a municipality assumes the legal obligation of carrying out the grantor's desires by upholding the terms of the easement. The grantor, of course, is not likely to violate his or her own easement, but eventually others will own the property. The grantee must be prepared to monitor and defend all of its easements against future violations. If the landowner claims a tax deduction for the easement, the IRS requires the grantee to “...have the resources to enforce the restrictions of the easement.”

To fulfill monitoring and enforcement responsibilities, most land trusts require a stewardship contribution with every conservation easement. A stewardship gift is a one-time, tax-deductible fee that generally reflects a small contribution in relation to the donor's tax savings. This contribution may come from sources other than the landowner. Because of the greater funding resources available to local governments than land trusts, municipalities that accept easement donations may not need to require contributions to a stewardship fund. However, where a land trust is the entity accepting the easement, the municipality should know how the land trust handles this matter.

The suggested donation amount generally is calculated by estimating the staff time, travel expenses, and potential legal services needed to monitor, service, and enforce the easement. Factors involved in the determination include:

- the size and accessibility of the parcel;
- the number of adjoining property owners and types of adjacent land uses;
- whether a survey has been completed for the property; and
- the terms of the easement restrictions, including permitted uses, retained building rights, and anticipated frequency of review and approval.

Alternatively, some land trusts calculate the stewardship contribution as a percentage of the easement's value.

Settlement

A real estate closing will be scheduled once all the conditions of the sales agreement have been satisfied. The title company or buyer's attorney generally handles the closing, ensuring that the grantor receives the agreed-upon compensation and the grantee receives the easement. If the easement is being donated, a formal closing is unnecessary.

After the grantor and the grantee have signed the easement, the document must be recorded at the office of the local recorder of deeds. This provides notice to future owners about the easement's restrictions at the time they obtain title reports. To coordinate local land protection efforts, municipalities may want to ask land trusts to notify them when the land trust accepts an easement within the municipality.

Publicity

The municipality should recognize the landowner's generosity and cooperation in a proclamation, plaque or letter to the landowner. If appropriate, a press release or media event can publicize the acquisition and explain its benefits to the community. This may generate more landowners interested in conserving their properties.

The easement agreement should allow the municipality to erect a "Property Protected by XYZ Township" sign on the property so that a passerby will recognize where open space dollars are going.

Remember, many years of stewardship are just beginning, so the landowner's good will is critical to the continued success of the easement.



How Municipalities Can Help

Municipalities Can Acquire and Fund Easements Themselves

Municipalities have long been authorized to acquire land for active or passive **recreational** purposes. To clarify that municipalities also were allowed to use tax dollars to preserve **non-recreational** land from development, in 1996 a law commonly referred to as Act 153 was passed to provide specific authority for townships, cities, and boroughs to purchase interests in land solely for conservation purposes (32 P.S. §5001 et seq.; this law amended Act 442 of 1968, the “Open Space Lands” law that granted only counties and the state the right to acquire and hold open space lands.)

Municipal acquisitions under Act 153 are authorized so long as they provide “open space benefits,” which is broadly stated to include protection of:

- water resources and watersheds;
- forests and farmland;
- natural resources such as floodplains and steep slopes;
- scenic areas visible from public rights-of-way;
- historic, geologic, and botanic sites of interest; and
- open space between communities.

Some municipalities rely instead/(or in addition) on the authority of the real property provisions of the municipal codes in making their open space and easement acquisitions.

Local Taxing Options

In addition to granting clear statutory authority for the acquisition of conservation easements via purchase, donation, or bequest, Act 153 provides local governments with expanded “local taxing options,” which work as follows.

The Act authorizes municipalities to establish a property tax or earned income tax to fund open space and agricultural preservation, **in excess of the rate limits** set by the various municipal codes and the Local Tax Enabling Act (which otherwise caps the earned income tax rate at 1%). The local government first must place the question of a tax increase on the ballot as a referendum and obtain approval from a majority of the voters. The specific language to be used on the ballot is set forth in the Act.

Another local taxing option of Act 153 authorizes municipalities to pay landowners for easements and fee simple properties on a **long-term installment basis** to permit landowners to defer capital gains taxes and receive tax-exempt interest on the sale price.

Also pursuant to Act 153, school districts have the option to adopt a **millage freeze** on properties subject to an easement held (or co-held) by a local government unit or subject to an easement under the state’s Agricultural Security Area Law. The eased property either must be in active agriculture or agricultural reserve, or be a private forest reserve. (A school district resolution adopting a millage freeze is reprinted in Appendix C.)

Required Planning Steps

If a municipality wants to utilize the local taxing options of Act 153, it must follow the open space planning requirements outlined in the legislation. The Act requires the municipality's governing body to adopt a natural resource, recreation, or land use plan after recommendation by the municipal planning commission. (If the municipality has no planning commission, the plan must be approved by the county planning commission and adopted by the local governing body.) Municipalities may not acquire conservation easements pursuant to Act 153 unless the parcels are first "designated for open space uses" in the plan.

Although Act 153 does not set forth a designation procedure, all properties that have conservation value to the municipality probably should be listed by tax map parcel number or shown on a map attached to the plan. If necessary, the plan or map presumably can be revised later to incorporate additional properties.

Either in the Act 153-mandated open space plan or in a separate ordinance or resolution, the municipality also must establish procedures to:

- review open space parcels for acquisition;
- rate and rank the parcels; and
- set the price the municipality will pay.

For instance, the plan might provide for the environmental advisory council ("EAC") or open space committee to evaluate all acquisition proposals before the supervisors initiate their review. The plan should list evaluation factors the reviewing committee must consider. Evaluation criteria likely will vary by municipality. Where one township may prize farmland, another will favor wooded viewsheds, and another will give priority to properties that protect stream valleys. The plan also may simply state that the maximum price the municipality will pay for a parcel will be determined by one or more appraisals.

After the municipality decides which of the designated properties it intends to acquire, it must hold a public hearing. By the time of the hearing, the municipality and the landowner will have appraisals in hand and likely will have negotiated the terms and price of the proposed acquisition. Because Act 153 does not permit municipalities to acquire open space lands by eminent domain, a landowner can simply refuse to sell at the price offered by the local government if negotiations are not satisfactory. If the municipality believes protection of a particular tract is crucial, and the landowner is unwilling to bargain, it will need to condemn the land for park or recreation purposes pursuant to the relevant municipal code.

Act 153 allows municipalities to purchase conservation land in fee simple as well as through easement. The local government must then offer this property for resale within two years, subject to a conservation easement limiting the property to "open space uses." This provision of Act 153 effectively permits revolving funds to be established to acquire ownership of designated parcels and then to resell the properties subject to easement.

Once property is eased pursuant to Act 153, its assessment must reflect any resultant decrease in market value. (32 P.S. §5009.)



*"Of what avail
are 40 freedoms
without a blank
spot on the
map."*

– Aldo Leopold

Municipalities Can Work With Land Trusts

Although municipalities are authorized to acquire conservation easements directly from landowners, they typically involve a third party in the transaction: a local or regional land trust. According to the Land Trust Alliance, as of December 2000, the 1,263 land trusts in America had protected almost 6.5 million acres of open space.

There are a variety of ways that a local government can partner with a land trust.

Land trusts can be valuable partners in implementing local governments' open space plans. Land trusts are likely to receive offers of easements that would not be made to a municipality, because some landowners may be hesitant to deal directly with a governmental body. Land trusts can act more quickly than a municipality to acquire easements on endangered properties, and they can raise tax-deductible funds for purchasing easements. Unlike local governments, they can purchase easements at above-appraisal prices, if necessary. Most importantly, handling conservation easements is a complicated process, involving coordination with appraisers, biologists, lawyers, surveyors, and sometimes, bankers. Municipal officials and volunteers on municipal open space committees rarely have the expertise and time necessary to handle ongoing land protection transactions. Many land trusts have full-time, paid staff with the capability in-house to handle these deals. Land trusts with volunteer staff can, at a minimum, provide guidance on the transactions as well as referrals to experienced professionals.

An important and necessary first step in the conservation process is to create a municipality-wide open space plan that identifies priority lands for protection. Most effective plans now utilize a computerized geographic information system ("GIS") to show different layers of information about a municipality, such as the location of its undeveloped parcels greater than 20 acres, prime agricultural soils, historic resources, steep slopes, forested areas, and wetlands. Some large land trusts have in-house planning staff that can work with municipalities to create strong open space plans that satisfy Act 153 planning requirements.

Using the open space plan as a guide, a municipality could forge a partnership with a cooperating land trust to encourage private land stewardship. An informational program could be developed to ensure that targeted landowners in the municipality were made aware of opportunities for land preservation. Meetings could be held where land trust staff discuss the financial incentives and costs associated with land preservation. It can be powerful to include past easement donors speaking as to why they donated and how it made them feel. Handouts about the municipal open space program and conservation easements should be distributed. (Municipalities can draft their own materials, perhaps referring to pages 5-9 of *The Conservation Easement Handbook* listed in Appendix D as a guide; or they can consider purchasing preprinted pamphlets on conservation options from the Land Trust Alliance.) These informational meetings could occur in groups or one-on-one with key landowners.

Note: An easement on even a single property is beneficial for the community, but easements are ideal for an area-wide approach to land protection. Several neighbors might agree to donate an easement once a central property is eased or once a set number of easements are donated. Executed easements may be placed in escrow and take effect only if and when agreed-upon conditions occur.

If a landowner seems interested in conserving his or her land, an informal tour of the property should be scheduled to help answer two important questions:

- 1) Does the property meet the municipality's or land trust's criteria for accepting easements?; and
- 2) Will it be possible to develop easement terms that are acceptable to all parties?

If the answer to these questions is “yes,” the parties need to decide if the easement will be held by the municipality, by a land trust, or by *both* entities, in which case the local government and the land trust are called “co-holders.” Landowners may request that the easement be co-held by a municipality to enable the property's tax millage to be frozen under Act 153. Or they may want the easement to be co-held by a land trust because they believe the non-profit will provide more stringent monitoring and enforcement protection. Joint holding of easements must be carefully structured to minimize possible misunderstandings between the co-holders. A co-held easement document should address (in the document or in a separate memorandum of understanding) who will monitor and enforce the easement, how will this activity be financed, who needs to approve changes or landowner requests for approval, and how proceeds will be distributed if the easement is extinguished, for instance through condemnation.

If the municipality does not want, or is not yet prepared, to acquire easements itself, it might request that the interested landowner deal directly with a cooperating land trust. Alternatively, municipal representatives could begin to negotiate the terms of the easement with the landowner. Once a general agreement has been reached, a land trust project manager might be asked to serve as a liaison among the landowner, the landowner's attorney, and the municipality.

Whether or not the municipality ultimately will be the easement holder, experienced land trust staff can be hired to prepare the baseline documentation and draft the initial version of the easement document.

The municipality may be asked to underwrite all or a portion of the land trust's staff costs associated with negotiating and finalizing the transaction. One approach could be for the land trust to contract to serve as the municipal open space consultant on a “not-to-exceed” basis. In other cases, a land trust will be able to pass its costs on to an affluent landowner or will have grants or foundation funding that enables staff to serve in a facilitative role without charging a fee.

As part of its land protection program, a municipality may want to establish a reimbursement program to assist landowners with hard costs associated with easement donation, such as appraisal and survey. A landowner may be willing to donate an easement but be unwilling or unable to spend the necessary (albeit tax-deductible) up-front costs. If a land trust will be holding the easement, and a stewardship donation is required, the municipality may choose to subsidize a contribution to the fund.

*“Even if we
are on the right
track, if we just
stand still we
will be run
over.”*

The Pennsylvania Department of Agriculture runs a grant program that reimburses qualified land trusts up to \$5,000 for transaction costs such as appraisal, legal services, document preparation, and title fees incurred in the acquisition of agricultural conservation easements. Where a municipality and a land trust are working together on a farmland preservation project, the land trust may apply for this grant. (Call the Dept. of Agriculture's Bureau of Farmland Preservation for more information: 717-783-3167.)

Once the number of municipally-held easements has grown substantially, the municipality may choose to hire its own staff to manage the easement process and perform the monitoring. A municipality may, instead, decide to contract its easement monitoring responsibilities to a land trust.

On occasion, a municipality may have trouble finding a land trust that will accept all the easements the municipality wants to target. One land trust might only acquire easements within a specific watershed, while another might set a minimum acreage requirement, accepting only easements greater than five or ten acres in size. Where a municipality's land protection goals differ from that of land trusts in its area, it may want to establish a municipal land trust. (Useful guides are *Starting A Land Trust* and *The Standards and Practices Guidebook: An Operating Manual for Land Trusts*, listed in Appendix D.)

Example: West Pikeland (Chester County) Township recently formed a §501(c)(3) land trust to focus on land protection in the municipality. The township will provide start-up funding for the first several years and appoint a majority of its directors.

Easements Can Complement Municipal Regulations

Conservation easements obviously can reinforce and complement a municipality's land planning regulations. For instance, after an easement has been recorded, future development proposals for eased properties must comply with the terms of the easement in addition to the municipality's regulations, buttressing the preservation of open space.

Municipalities that want to preserve open space can react to development by trying to reshape subdivision plans after submission or be proactive and approach significant landowners before developers.

During the subdivision and land development review process municipalities can suggest that easements be placed on particular parcels. The municipal open space plan should guide the local government in its requests for easement donations. (If the landowner is seeking a tax deduction, the municipality should be cautious to avoid requiring that an easement be donated, which could threaten the charitable nature of the easement donation and disqualify the tax deduction.)

Open space requirements also can be built right into the subdivision approval process. (See *Designing Open Space Subdivisions: A Practical Step-by-Step Approach*, listed in Appendix D.) To the extent that municipal ordinances require open space as a condition to developing large parcels, easements can be used as a long-term management tool. Whether the open space remaining after development is held privately as part of the house lots, or as common open space, a conservation easement can protect these resources. It should be noted that the greater the number of landowners living adjacent to or having access to the easement, the greater the potential for violations to occur. An entity that accepts an easement on property in a residential subdivision should ensure that it receives adequate funding to carry out its responsibilities.

Municipal Open Space Toolbox

Conservation easements are just one tool for open space preservation. Others include:

Regulatory Actions

- agricultural zoning
- transferable development rights (TDRs)
- zoning to preserve natural resources
- cluster or PRD (Planned Residential Development) zoning

The effectiveness of regulatory tools is limited, however, by constitutional constraints that:

- 1) require municipalities to provide for a “fair share” of all valid types of land uses; and
- 2) preclude regulatory “takings” of private property.

Landowner Actions

- outright donation of land
- donation by will
- donation with retention of landowner’s life rights
- bargain sale
- right of first refusal
- option to purchase

Land Acquisition

- mandatory dedication of recreational lands in new subdivisions or payment of fees in lieu (Section 503(11) of the Pennsylvania Municipalities Planning Code)
- acquisition of land for parks and recreation areas via purchase or condemnation

The handbook, *Guiding Growth: Building Better Communities and Protecting Our Countryside*, listed in Appendix D, contains information about these and many other techniques for land preservation.

*“Action is the
antidote to
despair. Find
a corner of
the world and
fix it.”*

– Joan Dunning

Financial Benefits of Easements

Financial Benefits to Municipalities of Acquiring Easements

Preservation of open space makes sense for a multitude of environmental and open space reasons. But municipalities are learning that conservation also makes **financial** sense.

Saving Land Saves Money

Studies have shown that **residential development costs a community much more, in increased municipal and school district services, than do agricultural or open space uses**, even after taking into account increases in property tax revenue from residential development. Consequently, municipalities and school districts can sometimes reap substantial financial benefits when they encourage landowners to protect large parcels from subdivision.

The analysis is as follows:

- If a 100-acre farm were developed in an area of the municipality zoned for one house per acre, it is reasonable to anticipate that 85 new homes might be constructed (leaving aside some land for streets and steep slopes, for example).
- Assuming there are 0.83 public school students per home (estimate from the Central Bucks (County) School District), the new development would add 70.55 new public school students. ($85 \times 0.83 = 70.55$)
- If it costs \$8,615 to educate a public school student (using 1997 figures from the Central Bucks (County) School District), the total cost for 70.55 students would be \$607,788. The school tax revenues for the 85 homes, at an average of \$2,913 generated per home (same source), would be \$247,605.
- **The cost to the community of allowing the farm to be developed thus would be \$360,183 per year.** ($\$607,788 \text{ costs} - \$247,605 \text{ revenues} = \$360,183 \text{ costs}$). **Note that this shortfall is an ongoing, permanent expense that will tend to increase over time** as education costs escalate, and which does not even reflect capital costs (i.e., new school construction) or increased municipal costs (i.e., more fire, police, and trash services). Taxes will need to rise to cover these costs of development.

Alternatively, the community could choose to purchase a conservation easement on the 100-acre farm. Assuming an average cost per acre of \$12,933 for the easement (easement and fee simple costs derived from 1998 appraisals performed for the Bucks County Agricultural Lands Preservation Board), the purchase price would be \$1,293,300. This means that **it would take the community only 3.59 years to break even!** ($\$1,293,300 \div \$360,183/\text{year} = 3.59 \text{ years}$). (For more information on the cost-benefit analysis of open space, see *Opportunity Knocks* and *Saving Land Saves Money*, listed in Appendix D.)

Fee simple acquisition of the farm also would save the community money in the example above, but it would take slightly longer to break even on the purchase. (4.58 years, assuming a fee simple sale price of \$16,500 per acre.) Easements are less expensive because not all of the ownership rights are being acquired.

Another benefit of using conservation easements is that eased land remains privately-owned and on the tax rolls. Although an easement reduces a property's market value and thus should lower its real estate assessment, property coming under easement may already enjoy preferential tax treatment under Act 319 ("Clean and Green," which requires a qualified property to be assessed based on its agricultural or forest use value, rather than at its "highest and best use" valuation). A conservation easement would create no further tax reduction for property already enrolled in Act 319, although it would make the reduction permanent.

Even if an easement were to result in a real estate tax break for the landowner, the overall impact on a tax base made up primarily of commercial and residential properties would be small. In any event, a reduction in the taxable valuation of eased property may be offset by the increased taxable value of the neighboring properties. Studies have shown that parcels next to permanently preserved open space have enhanced property values because they command premium prices due to their desirable location.

Sources of Acquisition Funding

Matching grant funding is available from DCNR to assist municipalities and land trusts in purchasing easements on open space properties. (Contact DCNR's Bureau of Recreation and Conservation for more information: 717-787-2659.) Several counties in the Commonwealth also have enacted open space funding programs. Most of these make matching acquisition grants to municipalities that have adopted open space plans.

State and county funding sources are limited, however, which is why many communities are issuing their own bonds and imposing taxes to purchase open space. **Between 1987 and 2002, municipalities in the state have raised more than \$145 million to finance the protection of open space.** (For a list of Pennsylvania municipalities that have raised open space funds, please refer to *Opportunity Knocks*, listed in Appendix D. To learn more about raising money for open space, please look at *Financing Open Space: A Guide for Pennsylvania's Municipalities* in that appendix.)

Financial Benefits to Landowners of Granting Easements

Most municipalities will never have enough funds to purchase easements on all the land they would like to protect. Some local governments will be able to accept only donated easements. Fortunately, the federal government has created strong incentives for easement donation. Valuable income, estate, and, in some cases, property tax savings await many landowners who place easements on their properties. Municipal officials and open space committees should be aware of these financial incentives so they can talk with landowners generally about the benefits of donating easements. (Be sure to advise landowners to consult with their own legal or tax advisors to be certain of the applicable laws and regulations in effect at the time of the transaction. Be sure also to discuss the possible costs involved with donating or selling an easement.)

The overview below outlines the financial implications of granting a conservation easement. Please refer to the following books, listed in Appendix D, for more detailed explanations: *Preserving Family Lands: Books I and II*; *Conservation Options: A Landowner's Guide*; and *Tax Strategies in Land Conservation Transactions*.

Income Tax Benefits

A landowner who donates an easement or sells it for less than fair market value may be entitled to a federal income tax deduction under §170(h) of the Internal Revenue Code (the “Code”). First, the IRS specifies that to qualify for the deduction, the perpetual easement must be conveyed to a governmental unit or a “qualified organization” that is a §501(c)(3) charitable organization with the commitment and resources to enforce the easement’s restrictions. (To qualify as an easement holder under Pennsylvania’s Conservation and Preservation Easements Act, the qualified organization also must be registered with the Pennsylvania Department of State, Bureau of Charitable Organizations, and have a conservation-oriented mission.) The second IRS requirement is that the conveyance be “exclusively for conservation purposes,” which are defined as:

- 1) Preservation of land for outdoor recreation by the general public or for education of the general public;
- 2) Protection of relatively natural fish, wildlife, or plant habitats;
- 3) Preservation of open space (including farmland and forest land) which yields a significant public benefit AND is either 1) for the general public’s scenic enjoyment, or 2) pursuant to a clearly delineated federal, state, or local conservation policy (e.g., an open space plan); or
- 4) Preservation of historically important land areas or certified historic structures.

To increase the chances of qualifying for a deduction, the easement document and the baseline documentation for a property generally will be written with an eye towards fitting the property into as many “conservation purpose” categories as possible.

Perhaps the most common conservation purpose is #3 above, which requires as a threshold that the easement yield “significant public benefit.” Factors to consider in assessing public benefit, according to Treasury regulations, include the property’s uniqueness and the intensity of land development in its vicinity. Assuming the property meets this prerequisite, its preservation also must be (i) for scenic purposes; or (ii) pursuant to clearly delineated governmental policy.

Whether easing the property will provide “scenic enjoyment” for the general public can be determined, according to IRS regulations, by analyzing factors such as whether the property provides relief from urban density and the degree to which the land use maintains the character of the landscape. With a scenic easement, the public must have visual access but not necessarily physical access.

Easements donated pursuant to “clearly delineated governmental policy” also do not require public access. Examples of clearly delineated governmental conservation policies include: state scenic area or heritage park legislation; adopted open space plans; preferential tax assessment laws; and Agricultural Security Area designation. To assist landowners’ claims to the IRS that their easement donations are tax-deductible under §170(h) of the Code, municipalities may pass resolutions stating that the donations are pursuant to a clearly delineated local conservation policy. (See municipal resolution in Appendix C.)

IRS regulations state that easements donated for conservation purpose #1 (preservation of property for recreational or educational use) must allow the public substantial and regular access to the land. This is not a desirable option for many landowners. Easements donated for conservation purpose #2 (important natural areas and habitats for endangered wildlife or plants), on the other hand, are allowed to limit or even prohibit public access due to the sensitive nature of the property's ecology.

The mechanics of the charitable income tax deduction are as follows:

The value of the tax deduction is determined by the difference between the “highest and best use” of the property **before** donation of the easement and the value of the property **after** it is restricted by the easement. In an urbanizing area, a property's highest and best use probably is its value if it were fully subdivided and developed under current zoning regulations. In a more remote area, a property's highest and best use might be as a hunting reserve. While all conservation easements reduce a property's market values, the amount of the diminution depends on how restrictive the easement is, the property's location, and its unrestricted development value. Typically, an easement will reduce a property's value by 30% to 70%. As noted in Part II of this guide, where the value of the deduction to be claimed is more than \$5,000, the IRS requires that the donor obtain a qualified appraisal to justify the value of the gift at the time the easement is conveyed.

If the easement satisfies IRS regulations, it will be treated as a tax-deductible charitable donation. The maximum annual charitable deduction a taxpayer can take for gifts of appreciated property, such as most land and easement donations, is 30% of adjusted gross income (“AGI”; i.e., income minus standard deductions.). (Or taxpayers may elect the less-common alternative deduction described in the sidebar on the next page.) This deduction may be spread out for up to six years. Any remaining donation value cannot be used after the sixth year.

To give an example, assume landowner X donates a conservation easement to his municipality. If the pre-easement property was appraised at \$300,000 and the easement restrictions reduce the property's fair market value to \$100,000, the value of the easement donation is \$200,000. Assume Mr. X's income remains steady at an AGI of \$120,000 per year over the six-year period after the donation. His annual deduction would be capped at 30% of AGI, or \$40,000 (30% x \$120,000). He, therefore, could deduct \$40,000 each year until the \$200,000 donation is used up, which would take five years. If Mr. X is in the 28% tax bracket, he would realize a total tax savings of \$56,000 (28% of \$200,000).

Landowners with very valuable properties or with lower incomes may not be able to use up the allowable deduction in six years. In that case, landowners may choose to put easements on only a portion of their property. When they have used up the tax benefit for that six-year period, they can place an easement on another part of their property and reduce their taxable income for another six years.

*“The world was
not left to us
by our parents.
It was lent to
us by our
children.”
– African proverb*

The 50% Election

The 30% of AGI cap described above is most advantageous where property has appreciated in value from the time of purchase. That option uses a property's current fair market value as the "before donation" figure. Alternatively, taxpayers may use as the "before" value the land's basis, generally its purchase price or value when inherited. This alternative is mandatory if the landowner has held the property for less than one year or is a "dealer in property." A yearly deduction of up to 50% of AGI is allowed under this option, with a six year maximum. This 50% option is best for landowners whose property has not appreciated much, who recently bought or inherited the property, who expect a large drop in income in the near future, or who do not expect to live to use up the carry-forward period.

A **bargain sale** of a conservation easement can be a possibility for a landowner who wishes to preserve his or her property but who needs or wants income from the transaction. The landowner and municipality will negotiate a purchase price for the easement that is below its fair market value. The difference between the fair market value and the actual price paid may qualify as a tax-deductible charitable donation. Although a landowner receives more money from a sale at fair market value than from a bargain sale, the tax benefits from the charitable donation may reduce the disparity.

Estate Tax Benefits

Estate taxes are determined by valuing the land's highest potential value (e.g., for subdivision) at the time the landowner dies, and not by its actual use (e.g., farmland) at the time of death. Heirs thus are required to pay a tax – currently as high as 55% in some cases – on the land's development potential. Unfortunately, because of high estate taxes, many Pennsylvanians are unable to keep their land in the family.

Placing a conservation easement on all or part of the property reduces its development potential and thus lowers the estate tax the IRS will impose. Under the American Farm and Ranch Protection Act of 1997, a landowner's estate also now may **totally exclude from federal estate taxation** up to 40% of the value of the eased land, with a cap of \$500,000. A landowner can donate an easement prior to death or the heirs may choose to donate the easement within a limited time after the landowner's death.

An easement may be donated by will if a landowner is conservation-minded but does not want to constrain use of the property during his or her lifetime. This alternative does not provide income tax benefits to the landowner but does reduce estate taxes. To grant an easement by will, the landowner should negotiate the terms of the easement in advance with the easement holder and add the draft easement as a codicil to the will. The codicil should authorize the executors to restrict the property by recording the easement upon the landowner's death and to make any necessary future amendments to the easement. The landowner may change the easement's terms at a later date or even rescind it if family circumstances change. Or the landowner may later decide to donate the easement during his or her lifetime.

With careful tax planning, the estate tax may be reduced sufficiently to allow the heirs to pay the tax without selling the land, allowing the property to remain in the family for additional generations. Of course, potential easement donors should be advised to retain legal counsel to guide them through the tax planning process.

Property Tax Benefits

In Pennsylvania, it is the landowner's responsibility to go before the Board of Assessment Appeal to argue for the lower property tax rate that should result from permanent easement restrictions. This argument should be assisted by Section 5009 of Act 153, which specifically states that property assessments must reflect any changes in market value resulting from the local government's acquisition of an easement on property.

Agricultural conservation easements that are donated or sold, even to *non-municipal* holders such as land trusts, are also required to be assessed at the land's restricted farmland value. (See Preserved Farmland Tax Stabilization Act of 1994, P.L. 605, No. 91 (the "Act").) Easements do not have to be part of the state or county agricultural preservation program to constitute an "agricultural conservation easement" under the Act, but they do need to contain a third-party right of enforcement.

Note that in many cases an easement will not lower the property tax assessment because land which comes under easement often is already under one of the state's preferential tax assessment laws, such as Act 319 ("Clean and Green") or Act 515 ("County Open Space Covenants").

Other Tax Savings

Other possible tax savings may result from sale or donation of an easement:

*As noted above in Part III, **school districts** now have the authority to exempt municipally-eased properties from **real estate millage** increases.

*Placing easement restrictions on property before conveying the property as a gift may substantially reduce the **federal gift taxes** owed.

*Proposals currently are being considered in Congress that would reduce the **capital gains tax** on sales of property to land trusts or municipalities and expand the deductibility of conservation easement donations.

Easement Stewardship

Monitoring the Easement

As easement holder, the municipality or land trust takes on the perpetual burden of monitoring the easement to ensure that its terms are followed. The holder needs to visit the property on a regular basis, maintain adequate records, respond to landowners' questions and requests for approvals, document any changes in the condition of the property, and issue written interpretations of easement restrictions when necessary. As noted above in "Frequently Asked Questions," the holder also should have a policy in place to respond to any requests for amendment of the easement document.

Should inappropriate changes to the property be made, the easement holder will try to correct these conditions through voluntary compliance, but it needs to be prepared to use the legal process to defend the easement. *The Conservation Easement Handbook*, listed in Appendix D, notes three key ways to avoid costly enforcement battles:

- 1) Institute a program of regular and well-documented monitoring;
- 2) Prepare an easement agreement with clear and enforceable restrictions; and
- 3) Maintain a good relationship with the landowner.

Periodic visits to the property reminds landowners that they are (legally) committed to observe the easement terms and introduces the easement holder to any new owners. Monitoring visits typically are conducted annually, but there may be special occasions that necessitate inspections, such as when vandalism is suspected or after severe weather conditions. The easement agreement should be written to give the holder the power to inspect the property at any reasonable time with advance notice.

The purpose of the inspection is not to find violations and penalize the landowner; most violations are done innocently. The real purpose is to clear up any misunderstandings early, before landowners make major changes in land uses or conditions, and before they incur large costs in making these changes. Just as importantly, these inspection sessions give the easement holder a chance to air any concerns it may have. Again, the more time taken to clearly spell out details prior to putting the easement in force, the fewer the number of problems that will arise later.

During the inspection the monitor will use a checklist or form to record changes on the property and note any concerns. A municipality or land trust can develop its own form or use one of the samples provided in *The Conservation Easement Stewardship Guide: Designing, Monitoring, and Enforcing Easements*, listed in Appendix D. Easement monitors may be easement holder staff, volunteers, or contracted land trust staff. If volunteer monitors are used, the information in *Monitor Training Curriculum & Handbook*, listed in Appendix D, may be useful.

It is good practice to send the landowner a thank-you letter, together with a copy of the monitoring report, after the visit. In addition to contact with the landowner at the time of the annual inspection, it is smart to keep contact throughout the rest of the year by adding owners of eased property to the mailing list for newsletters the EAC or open space committee might generate. The municipality also might want to run occasional workshops on topics such as native plant species or pest management, in order to cultivate a good relationship.



Enforcing the Easement Restrictions

The Conservation Easement Handbook has the following advice regarding easement violations:

- 1) Stay out of court whenever possible;
- 2) Make sure the easement document specifies that you can go to court under specific circumstances; and
- 3) If you must go to court, make sure you can win.

If the monitoring visit uncovers possible easement violations, these should be discussed with the appropriate staff person at the municipality or land trust. The easement holder's attorney may need to help interpret the easement restrictions in question.

A face-to-face meeting with the landowner is important so that the alleged violation can be discussed and a possible remedy proposed. The easement agreement should provide the landowner with a set time period (e.g., 30 days) for curing violations.

If violations occur which cannot be amicably resolved, the easement holder must be prepared to enforce the integrity of the easement through appropriate legal means. The easement agreement should specify that payment of money damages by the landowner is not an adequate remedy for violations of the easement's restrictions and that "equitable" remedies that require the landowner to fix or reverse violations are more appropriate.

Outline of a Typical Conservation Easement

Following is an outline of the standard provisions of a Heritage Conservancy easement. This is just one approach; acceptable variations in format (and in transactions) are endless. Municipalities also are advised to refer to the Land Trust Alliance's model easement contained in *The Conservation Easement Handbook*, listed in Appendix D, for a widely-followed (non-Pennsylvania) sample easement and detailed explanation of provisions. As noted in Part I, easements purchased under the state's Agricultural Security Area Law need to follow that program's standard easement. Likewise, projects using state or county funding need to incorporate clauses required by those funders.

◆ Parties

- Grantor (landowner(s)) and Grantee (easement holder and any co-holder)

◆ Date of Conveyance

◆ Article I: Background and Easement Objectives

- Legal description of property
- Reference to attachments and baseline documentation
- Qualifications (state and federal) of grantee to hold easement
- Compliance with Conservation & Preservation Easements Act
- Easement objectives and conservation values to be protected
- Grant of easement in perpetuity

◆ Article II: Restrictions (this is the heavily negotiated “heart” of the easement document)

- Subdivision (also specify whether multiple parcels that comprise the eased property may be conveyed separately)
- Prohibited land uses
 - Three methods of defining prohibited land uses:
 - Exclusive: any land use not expressly prohibited is permitted
 - Unreserved: any land use not expressly reserved is prohibited
 - Inconsistent: any land use inconsistent is prohibited
 - Should also prohibit commercial recreational use that is more than “de minimus” in order to qualify for federal estate tax benefit
- Permitted construction
 - Modification/replacement of existing improvements (may specify % increase allowed)
 - New construction (may specify building envelopes)
- Resource protection methods
- Dumping not allowed
- Density limitations (not allowing eased property to be included with other, non-eased property for purposes of development density calculations)
- Subsequent transfers (future deeds must reference easement; owner must notify easement holder upon property's transfer)

◆ **Article III: Rights of Grantee and Grantor**

- Grantee's right of access to inspect property
- Access by public (typically not allowed)
- Reserved rights of grantor
- Notice to grantee (where required in Article II)
- Prior review and approval by grantee (where required in Article II; for instance, before grantor may exercise specified reserved rights, such as new construction)
- Approval procedure and time periods
- Violation
 - Notice; cure period
 - Remedies
 - Availability of equitable relief
 - Cumulative remedies
 - Acts beyond grantor's control
- Reimbursement obligations on part of grantor
- Maintenance, taxes, etc., not grantee's responsibility
- Estoppel certificate (upon request, grantor will issue letter certifying that landowner is in compliance with easement)

◆ **Article IV: General Provisions**

- No waiver due to inaction by grantee
- Indemnification by grantee of grantor
- Distribution of condemnation proceeds
- Extinguishment of easement by court
- Grantor's representations and warranties
 - Sole owner
 - No liens/encumbrances (or mortgage subordinated)
 - Payment before delinquency of charges that may become liens superior in priority to easement
 - Possession/leases
 - Compliance with laws; criminal/civil investigations
 - Hazardous material
- Successor to grantee
- Delivery of notices
- Incorporation by reference of other documents into easement
- Separate counsel retained by grantor
- Accuracy of baseline documentation (required by IRS)
- Interpretation in favor of grant of easement
- Severability of invalid easement provisions
- Entire agreement
- Doctrine of changed circumstances not applicable
- Amendment (if mutually agreed upon, certain provisions may be modified in the future as long as original intent is achieved)
- Termination of rights and obligations upon transfer
- Counterparts
- Captions
- Pennsylvania coal notice (required for properties containing workable coal seams)

◆ **Article V: Other Definitions**

◆ **Signatures and Acknowledgments (must be notarized and recorded)**

◆ **Exhibits**

- may include legal description; detailed summary of property's conservation values; and conservation plan for property, illustrating building envelopes)

The Conservation and Preservation Easements Act

Why Was the Act Needed?

Easements have been used as a tool for conservation in Pennsylvania for many decades under common law – that is, judge-made law. Although easements were a valid and legally binding mechanism at common law, the absence of state enabling legislation specifically authorizing their use was problematic on several fronts.

Traditional common law hostility to restraints on the transfer of property meant that courts placed the burden upon the easement holder to prove an easement's validity. Also, a number of highly technical common law doctrines made conveying easements traps for the unwary.

The state legislature recognized that these pitfalls were at odds with the public benefit that conservation easements provided. To remedy this situation, the Conservation and Preservation Easements Act (the “Act”) (Act 29 of 2001, Pub. L. No. 330) was passed in June 2001. Pennsylvania now joins the 48 other states that have legislation authorizing perpetual conservation and historic preservation easements. (Wyoming is alone in not having enabling legislation.)

Under the Act, many common law problems have been eliminated, and the rules of legal interpretation have shifted **in favor of** the grant of easement. By shifting the burden of proof onto those who challenge an easement's provisions or validity, the Act reduces potential legal costs associated with defending easements and may discourage legal challenges.

Differences From Common Law

Other major changes the Act makes to common law are summarized below:

- 1) An easement may explicitly grant an outside, third party the right to enforce any of its provisions (e.g., “no future subdivision”), but eligible third parties are limited to land trusts and government bodies, which must first sign and record written acceptances;
- 2) Parties which do not possess some type of right or interest in the eased property may not sue an easement owner for violating the easement or sue a municipality to enforce the terms of an easement;
- 3) The Act provides that if the easement holder dissolves and a willing successive holder cannot be found, the local government in which the easement is located automatically becomes the successive holder. (At common law, the doctrine of cy pres would guide a court in appointing a substitute trustee if the original holder dissolved.) This provision of the Act should not concern municipalities, because the chances that a holder would dissolve before assigning its easements or that a suitable successor could not be located are remote. Many easements, in fact, name back-up grantees in the document;

- 4) The Act does not address the effect of an easement upon valuation of eased property by local and state taxing authorities. Of course, even though the Act does not deal with this issue, owners of eased property in Pennsylvania are entitled to go before their boards of assessment appeal to seek revaluation. Nor does the Act alter or supersede legislation relating to agricultural conservation easements under Pennsylvania's Agricultural Area Security Law. The Act also does not create any new protections for easements against the power of eminent domain; and
- 5) Pennsylvania's Act contains a number of provisions designed to protect coal interests. The most important is that where the easement affects property containing a workable coal seam (or from which a coal interest has been severed), the easement document must notify the grantor that the easement may impair development of the coal interest. The legislation specifically requires the notice to be printed in the easement document in no less than 12-point type, to be preceded by the word "Notice" in no less than 24-point type, and to be signed by the easement grantor.

The Act does not list a definitive reference source to use in determining whether a property contains a workable coal seam. The Pennsylvania Geologic Survey does have an official map entitled "Distribution of Pennsylvania Coals" showing the location of workable, or "minable," bituminous and anthracite coal fields. (See www.dcnr.state.pa.us/topogeo/maps/map11.pdf.) Be aware that coal seams which are not *currently* deemed workable may exist in other locations and that what is deemed "workable" changes over time due to advances in technology and fluctuations in coal prices.

To take advantage of the Act's legal safeguards, attorneys representing landowners, municipalities and land trusts should amend existing easements as necessary. Practitioners may want to include language in the easement document stating that it is drafted with the intention of conforming with requirements for easements under the Act. Easements that are not so amended or those recorded after June 22, 2001, that do not comply with the Act will continue to be handled under common law principles. (See *A Guide to Pennsylvania's New Conservation and Preservation Easements Act* or the *Pennsylvania Land Trust Association's Guide to the Act* listed in Appendix D for more information.)

School District Resolution

The board of directors of the New Hope-Solebury School District passed the following resolution, pursuant to Act 153 of 1996, exempting certain eased property from further real estate millage increases.

Resolution No. 99

WHEREAS, the New Hope-Solebury School District is authorized by law to impose taxes on real property located within the School District; and

WHEREAS, the General Assembly of the Commonwealth of Pennsylvania enacted Act 153 of 1995 which contains, inter alia, provisions whereby a board of school directors of a school district may, by resolution, exempt certain real property from further millage increases imposed on property; and

WHEREAS, the Board of School Directors of the New Hope-Solebury School District has determined that it is in the best interest of the residents of the New Hope-Solebury School District to exempt certain real property being used for open space purposes from further millage increases imposed on real property;

NOW THEREFORE, be it, and it is hereby **RESOLVED** by the Board of School Directors of the New Hope-Solebury School District as follows:

The following real property is hereby exempt from further millage increases imposed on real property:

- (1) Those whose open space property interests have been acquired by New Hope Borough or Solebury Township, pursuant to Act 153 of 1996;
- (2) Real property which is subject to an easement acquired under the Act of June 30, 1981 (P.L.128, No. 43), known as the "Agricultural Area Security Law"; and
- (3) Real property all of whose TDR's ["transferable development rights"] have been transferred and retired by New Hope Borough or Solebury Township, without their development potential having occurred on other lands; and

provided that the exemption from further millage increases for real property as provided for in clauses (1), (2) or (3) of this Resolution shall be authorized only for real property qualifying for such exemption under the provisions of Section 2(b)(1) of Article VIII of the Constitution of Pennsylvania.

The millage freeze authorized herein shall apply to all eligible real property, whether the real property met the criteria of this Resolution prior to or subsequent to the effective date of this Resolution. For prior acquisitions, the date on which the millage rate shall be frozen is the effective date of this Resolution. For acquisitions subsequent to the effective date of this Resolution, the date on which the millage rate shall be frozen is the July 1st next following the date the property becomes eligible under clauses (1), (2) or (3) above.

New Hope Borough or Solebury Township shall give the New Hope-Solebury School District prompt written notice of the properties that are eligible for the freeze or which become eligible for the freeze. Failure of New Hope Borough or Solebury Township to properly include a property otherwise eligible for the freeze will cause loss of the exemption for that property for the next succeeding school year. Upon receipt of such notice, the New Hope-Solebury School District shall in turn give prompt notice to the appropriate tax collection agent of the exact amount of the millage, the date it was frozen, and each parcel to which the freeze applies. The exemptions granted under this Resolution shall not be considered by the State Tax Equalization Board in driving the market value of the New Hope-Solebury School District's real property so as to reduce the subsidy to the New Hope-Solebury School District or to increase the subsidy to any other school district.

On or before April 30th of each year, New Hope Borough and Solebury Township shall re-certify in writing the list of properties that continue to be eligible for the freeze. Failure of New Hope Borough or Solebury Township to re-certify a property that would otherwise be eligible for the freeze will result in the loss of exemption for said property for the next succeeding school year.

The New Hope-Solebury School District may repeal this Resolution at any time, provided, however, that the properties which are subject to the freeze when the Resolution is repealed shall continue to be frozen thereafter, but only for so long as the properties otherwise continue to be eligible for exemption under Act 153.

RESOLVED this _____ day of _____, 2001.

Municipal Resolution

Philadelphia's City Council passed the following resolution to facilitate the deductibility of easement donations pursuant to "clearly delineated local conservation policy," §170(h)(4)(A)(iii)(II):

Resolution:

Encouraging voluntary donations of conservation easements by landowners in the vicinity of Fairmount Park in order to further protect the Wissahickon Watershed and enhance the scenic, natural and open-space values of Fairmount Park for all Philadelphia.

WHEREAS, The Wissahickon Watershed in northwest Philadelphia encompasses eleven square miles with one-fourth of the area preserved as natural park land; and

WHEREAS, Through periodic additions, two thousand acres of open space flanking the banks of the Wissahickon Creek have been preserved as part of Fairmount Park; and

WHEREAS, The Wissahickon Watershed is bounded by Ridge Avenue, the Montgomery County Line, Mount Airy Avenue, Germantown Avenue and School House Lane; and

WHEREAS, Neighborhoods within the watershed include Germantown, Mount Airy, Chestnut Hill, Roxborough and East Falls – all having a unique combination of natural and urban assets; and

WHEREAS, This Council recognizes that the scenic, natural and open-space values of Fairmount Park promote the public welfare and preserve the character of Philadelphia as envisioned in William Penn's "greene countrie towne;" and

WHEREAS, In order to preserve the Watershed and decrease the hazards of erosion, siltation and channel enlargement within the Wissahickon Watershed, City Council enacted special environmental controls in 1975 which are contained in sec.14-1603 of the Zoning Code; and

WHEREAS, To further reduce the hazards of erosion and decrease congestion within the Watershed, preserve the historic areas and landscapes within the Watershed neighborhoods, and extend scenic views throughout the Fairmount Park system, the preservation of open-space should be encouraged; and

WHEREAS, A conservation easement is a flexible tool that can preserve and protect open space by permitting landowners to curtail further development of their property through the donation of a conservation easement to a qualified conservation organization or government agency which in turn insures the conditions of the easement are met over time; now therefore

RESOLVED, BY THE COUNCIL OF THE CITY OF PHILADELPHIA, That the City Council encourages voluntary donations of conservation easements by landowners in the vicinity of Fairmount Park in order to further protect the Wissahickon Watershed and enhance the scenic, natural and open-space values of Fairmount Park for all of Philadelphia.

Where to Get More Help

Publications

The following manuals are useful in establishing a municipal open space program:

Appraising Easements: Guidelines for Valuation of Land Conservation and Historic Preservation Easements (Land Trust Alliance and National Trust for Historic Preservation 1999).

The Conservation Easement Guide: Designing, Monitoring and Enforcing Easements (Brenda Lind 1991).

The Conservation Easement Handbook (Land Trust Exchange and the Trust for Public Land 1988).

Conservation Options for Private Landowners and Protecting Your Land with a Conservation Easement (companion brochures from Land Trust Alliance; set of 150 copies for \$45).

Conservation Options: A Landowner's Guide (Land Trust Alliance 1999).

Opportunity Knocks – Open Space as a Community Investment by Michael Frank (Heritage Conservancy 2000).

Preserving Family Lands: Book I – Essential Tax Strategies for the Landowner (Stephen J. Small, Esq., 1998).

Preserving Family Lands: Book II – More Planning Strategies for the Future (Stephen J. Small, Esq., 1997).

Saving Land Saves Money (Montgomery County Lands Trust 2001).

The Standards and Practices Guidebook: An Operating Manual for Land Trusts (Land Trust Alliance 1993).

Starting a Land Trust (Land Trust Alliance).

Other helpful reference materials include:

Community Trails Handbook (Brandywine Conservancy Environmental Management Center 1997).

The Costs of Sprawl in Pennsylvania (Clarion Associates 2000).

Designing Open Space Subdivisions: A Practical Step-by-Step Approach (Randall Arendt, Natural Lands Trust 1994).

Doing Deals: A Guide to Buying Land for Conservation (Trust for Public Land and the Land Trust Alliance 1995).

The EAC Handbook: A Guide for Pennsylvania's Municipal Environmental Advisory Councils (Pennsylvania Environmental Council 1996).

The Federal Tax Law of Conservation Easements, Third Supplement (Stephen J. Small, Esq., Land Trust Alliance 1997).

Financing Open Space: A Guide for Pennsylvania's Municipalities (Heritage Conservancy; to be published Fall 2002)

A Guide to Pennsylvania's New Conservation and Preservation Easements Act (Debra Wolf Goldstein, Esq., Pennsylvania Bar Quarterly, October 2001).

Guide to Pennsylvania's Conservation and Preservation Easements Act (PALTA 2001).

Guiding Growth: Building Better Communities and Protecting Our Countryside (Pennsylvania Environmental Council 1992).

Monitor Training Curriculum & Handbook (Vermont Land Trust 1997).

Pennsylvania Land Conservation Handbook (Allegheny Land Trust 1995).

The Recreation Use of Land and Water Act: Lory v. City of Philadelphia (Debra Wolf Goldstein, Esq., Duquesne Law Review, Spring 1997).

Taking Control of Your Land: A Land Stewardship Guidebook for Landowners (Chester County Planning Commission 2001).

Tax Strategies in Land Conservation Transactions (William T. Hutton, Esq., 1999).

Organizations

The national trade association for land trusts is the Land Trust Alliance in Washington, D.C. (202-638-4725; www.lta.org).

The state-level entity representing land trusts is the Pennsylvania Land Trust Association (“PALTA”) in Harrisburg (717-230-8560; 105 Locust Street, Suite 300, Harrisburg, PA 17101; palta@earthlink.net). To locate land trusts active in your area, please contact PALTA or refer to the following list (which, of course, will change over time):

Organization Name	Address	City	Zip Code
Allegheny Land Trust	280 Woodbine Lane	Mars	16046
Allegheny Valley Land Trust	PO Box 777	Kittanning	16201
Allegheny Valley Trails Association	PO Box 264	Franklin	16323
Armstrong County Conservancy	PO Box 777	Kittanning	16201
Audubon Pennsylvania	100 Wildwood Way	Harrisburg	17110
Audubon Society of Western PA	614 Dorseyville Rd.	Pittsburgh	15238
Bedminister Land Conservancy	PO Box 208	Bedminister	18910
Berks County Conservancy	960 Old Mill Rd.	Wyomissing	19610
Blue Mountain Eagle Climbing Club & Wilderness Park Association	PO Box 14982	Reading	19612
Brandywine Conservancy	PO Box 141	Chadds Ford	19317
Buck Hill Falls Conservation Foundation	PO Box 350	Buck Hill Falls	18232
Bushkill Stream Conservancy	PO Box 637	Easton	18042
Central Pennsylvania Conservancy	PO Box 587, 17 N. Front	Harrisburg	17108
Centre County Farmland Trust	328 S. Atherton St.	State College	16801
Chartiers Nature Conservancy	PO Box 44221	Pittsburgh	15205
Chesapeake Bay Foundation	614 N. Front St., Suite G	Harrisburg	17101
Clearwater Conservancy	2555 N. Atherton St.	State College	16803
Conemaugh Valley Conservancy	PO Box 907	Johnstown	15907
Conneaut Lake-French Creek Valley Conserv.	PO Box 434	Meadville	16335
Conservancy of Montgomery County	PO Box 28	Ambler	19002
Countryside Conservancy	PO Box 55	LaPlume	18471
Coventry Land Trust	2342 Jones Rd.	Pottstown	19465
Delaware Highlands Conservancy	PO Box 218	Hawley	18428
Earl Twp. Farmland Preservation Trust	PO Box 191	New Holland	17557
Earth Conservancy	101 South Main Street	Ashley	18706
East Marlborough Land Trust	712 Haldane Drive	Kennett Square	19348
Eden Hill Conservancy	PO Box 85	Spruce Creek	16683
Edward L. Rose Conservancy	PO Box 81	Brackney	18812
Farm and Natural Lands Trust of York County	156 North George St., Suite 300	York	17401
Farmland & Forest Conservancy	120 Hieskel Dr.	Port Matilda	16870
Fox Chapel Land Conservation Trust	303 S. Pasadena Dr.	Pittsburgh	15238
French & Pickering Creeks Conserv. Trust	3340 Coventryville Rd.	Coventryville	19465
Friends of the Riverfront	PO Box 42434	Pittsburgh	15203
Heritage Conservancy	85 Old Dublin Pike	Doylestown	18901
Hollow Oak Land Trust	PO Box 741	Moon Township	15108
Independence Marsh Foundation	1869 Barclay Hill Rd.	Beaver	15009
Kennett Township Land Trust	1001 E Baltimore Pike	Kennett Square	19348
Lacawac Sanctuary Foundation	RR1, Box 518	Lake Ariel	18436
Lackawanna Valley Conservancy	PO Box 368	Scranton	18501
Lake Erie Region Conservancy	2067 West 25th St.	Erie	16502
Lancaster County Conservancy	117 S. West End Ave.	Lancaster	17608
Lancaster Farmland Trust	128 E. Marion St.	Lancaster	17602
Land Conservancy of Adams County	PO Box 4584	Gettysburg	17325
Lebanon Valley Conservancy	2120 Cornwall Rd.	Lebanon	17042

Little Sewickley Creek Watershed Association	PO Box 183	Leetsdale	15056
London Britain Land Trust	PO Box 215	Kemblesville	19347
Lower Merion Conservancy	1301 Rose Glen Rd.	Gladwyne	19035
Loyalhanna Watershed Association	114 S. Market St., PO Box 561	Ligonier	15658
Manada Conservancy	PO Box 25	Hummelstown	17036
Merrill Linn Land & Waterways Conservancy	PO Box 501	Lewisburg	17837
Mid-Atlantic Karst Conservancy	PO Box 196	Murrysville	15668
Middletown Township Land Conservancy	338 Mt. Alverno Rd.	Media	19063
Montgomery County Lands Trust	PO Box 300	Lederach	19450
Mount Nittany Conservancy	PO Box 296	State College	16804
Natural Lands Trust	1031 Palmers Mill Rd.	Media	19063
Neighborhood Gardens Association	100 N. 20th St., Suite 309	Philadelphia	19103
North American Land Trust	PO Box 1578	Chadds Ford	19317
North Branch Land Trust	11 Carverton Rd.	Trucksville	18708
North Fork Conservancy	Waterplant Rd.	Brookville	15825
Northcentral Pennsylvania Conservancy	320 E. Third St., 2nd Floor	Williamsport	17701
Northeastern Pennsylvania Conservancy	1151 Oak St.	Pittston	18640
Northern Allegheny Conservancy	PO Box 661	Warren	16365
Open Land Conservancy of Chester Cty.	PO Box 1031	Paoli	19301
Paxton Creek Watershed Association & Educational Trust	PO Box 61674	Harrisburg	17106
Pennsbury Land Trust	PO Box 126	Chadds Ford	19317
Pennsylvania Environmental Council	1211 Chestnut Street, Suite 900 OR: 239 4th Avenue	Philadelphia Pittsburgh	19107 15222
Pennypack Ecological Restoration Trust	2955 Edge Hill Rd.	Huntington Valley	19006
Perkiomen Watershed Conservancy	1 Skippack Pike	Shwenksville	19473
Pine Creek Land Conservation Trust	PO Box 259	Ingomar	15127
Pine Creek Valley Watershed Association	PO Box 239	Oley	19547
Pocono Heritage Land Trust	PO Box 553	Pocono Pines	18350
Rails to Trails Conservancy	105 Locust St.	Harrisburg	17101
Regional Trail Corporation	PO Box 95	West Newton	15089
Roaring Run Watershed Association	PO Box 333	Apollo	15613
Sandy Creek Conservancy	55 McKeever Lane	Sandy Lake	16145
Schuylkill County Conservancy	297 Drehersville Rd.	Orwigsburg	17961
Seneca Highlands Conservancy	800 Minard Run Rd.	Bradford	16701
Shenango Conservancy	747 Greenville Rd	Mercer	16137
Somerset County Conservancy	PO Box 241	Somerset	15501
Southern Alleghenies Conservancy	702 W. Pitt St.	Bedford	15522
Springton Lake/Crum Creek Conservancy	3714 Gradyville Rd.	Newtown Sq.	19073
Susquehanna Piedmont Preservation Council	PO Box 517	Mt. Wolf	17347
The Conservation Fund, PA Office	105 North Front, Suite 400	Harrisburg	17101
The Nature Conservancy	Suite 470, Lee Park	Conshohocken	19428
The Scott Conservancy	760 Robinwood Drive	Pittsburgh	15220
The Trust for Public Land	666 Pennsylvania Ave., SE	Washington, D.C.	20003
Tinicum Conservancy	15 Tankhannen Rd.	Ottsville	18942
Trust for Keystone Trail Lands	PO Box 251	Cogan Station	17728
West Pikeland Land Trust	1439 Yellow Springs Rd.	Chester Springs	19425
West Vincent Land Trust, Inc.	PO Box 235	Birchrunville	19421
Western Pennsylvania Conservancy	209 Fourth Ave.	Pittsburgh	15222
Westmoreland Conservancy	PO Box 446	Murrysville	15668
White Clay Creek Conservancy	760 Chambers Rd.	Landenberg	19350
Wildlands Conservancy	3701 Orchid Place	Emmaus	18049
Willistown Conservation Trust	7000 Goshen Rd.	Newtown Sq.	19073
Wissahickon Valley Watershed Assoc.	12 Morris Rd.	Ambler	19002

About the Author and the Funders

Ms. Goldstein is General Counsel at Heritage Conservancy, a private, non-profit land trust in Doylestown, Pennsylvania, that protects natural and historic resources. She is a Fairmount Park Commissioner and board member of the Pennsylvania Land Trust Association. Prior to joining Heritage Conservancy, Ms. Goldstein was Regional Advisor to the Pennsylvania Department of Conservation and Natural Resources ("DCNR") and an attorney with Wolf, Block, Schorr and Solis-Cohen.

Heritage Conservancy, founded in 1958, owns and holds easements on open space, woodlands and stream valleys, in addition to owning historic structures. Heritage Conservancy's planning department has assisted municipalities with mapping natural resources and preparing open space plans.

DCNR's Bureau of Recreation and Conservation provides grants and technical assistance to support conservation, recreation, and open space projects in cities, towns, and rural communities across Pennsylvania. DCNR also manages the Commonwealth's 2.4 million acres of state park and forest land.

The William Penn Foundation's Environment and Communities program supports initiatives that protect and restore watersheds, revitalize communities around existing infrastructure, and promote smart growth and livable communities within the Delaware Valley region.

*"In the end, our society will be defined
not only by what we create, but by
what we refuse to destroy."*

– John Sawhill



85 Old Dublin Pike, Doylestown, PA 18901
(215) 345-7020 • Fax (215) 345-4328
www.heritageconservancy.org
email: hconserv@heritageconservancy.org



Department of Conservation and Natural Resources
Bureau of Recreation and Conservation
Rachel Carson State Office Building
P. O. Box 8475
Harrisburg, PA 17105-8475
(717) 783-4734 • Fax (717) 772-4363
www.dcnr.state.pa.us