

Tools for Conservation: Land Trusts & Easements

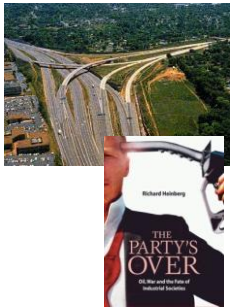
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4 Basic Ways to Protect Land

- Acquisition
 - "the only permanent solution?"
- Regulation
 - Protect sensitive areas
 - Control development patterns
 - Address pollution or hazards
- Fees & Charges
- Incentives – "most popular with the public"



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The Bundle of Rights Approach to Land Value

- Real estate is the physical land & all things attached to it
- Real property includes the benefits & rights inherent in the ownership of real estate
 - Right to occupancy
 - Right to sell in part or whole
 - Right to bequeath



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The Bundle of Rights

- Right to lease
- Right to Use and Occupy
- To Grade, Fill or Excavate
- To install new permanent roads or widen
- To install new lakes
- To occupy existing improvements & construct new ones
- To subdivide and Develop
- To Farm May also have/not mineral & water rights



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Land Acquisition

- Fee-simple (owning all the rights) – outright purchase – But How?
 - Earmarked fees or taxes
 - Right of first refusal -- both are "impractical"
- Conservation Easements
 - Maintain ownership but permanently sell some rights
- PDR (Purchase of Development Rights)
 - Gov't. buys development rights & retires them
 - NGOs & philanthropic organizations often help
 - Expensive & requires willing-buyer, willing-seller

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TDR (Transfer of Development Rights)

- Regulations (ESA) & Zoning restrict landowners' rights to develop (Ag/Forestry, Residential, Commercial, Industrial zones)

"Sale of Rights" Scenario

- Owners in restricted areas can sell their development rights to developers or owners in designated growth areas.
- Permanent easement prevents development in perpetuity.

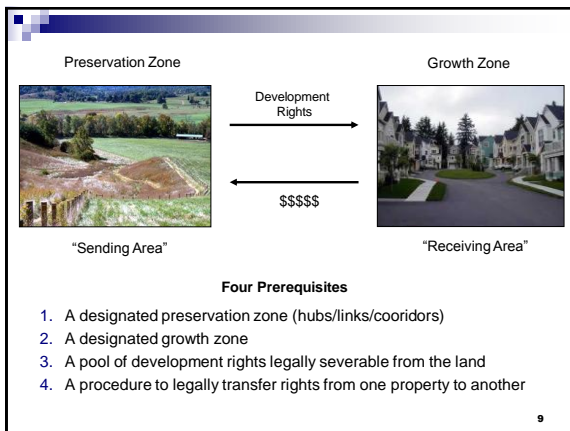
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TDR Banking

"Purchase Rights" Scenario

- Government TDR Bank
- Developers can purchase development rights which permits them to develop their land at a higher density
- Govt. TDR Bank uses funds to purchase more development rights to protect open space

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Conservation Options for Private Landowners

What if the private owner wants to protect the natural character of their land?

- Conservation easements
- Land donation
- Donating a remainder interest in land
- Donating land by will
- Bargain sale of land

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Overview of Conservation Easements

- What is a conservation easement? Historical preservation easement? Agricultural easement? Scenic easement? Conservation easement?
- Why grant a conservation easement?
- What kind of property can be protected by an easement?
- Who can grant an easement?
- How restrictive is an easement?
- How long does an easement last?
- Who can HOLD a conservation easement?

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History of Easements

- First easements in the late 1880s to protect parkways designed by Frederick Law Olmstead in the Boston Area.
- 1930's, the NPS made extensive use of easements to protect land along the Blue Ridge and Natchez Trace Parkways.
- 1950's, Wisconsin established a highly successful easement acquisition program to protect land bordering the Great River Road along the Mississippi River.
- States began to pass laws dealing with easements: what they were, how they could be created, declaring their validity, and outlining how they could be enforced and by whom.
- The Uniform Conservation Easement Act (UCEA) was approved in 1981 by the National Conference of Commissioners on Uniform State Laws

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History of Land Trusts

"Fastest growing sector of the conservation movement in the U.S."

- 1,600 land trusts in U.S., located in every state (compared to 53 in 26 states in 1950)
- Over 6.2 million acres of land protected (60,000 in ID)
- In the Pacific Northwest, in 2001, 70 local and regional land trusts protected 111,000 acres.
- Total lands protected in the NW (AK, ID, MT, OR, WA and WY) total 885,500 acres, an area the size of Delaware and Rhode Island. Most (778,500) is in Montana.

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Common Questions about Conservation Easements

1. What are the grantee's responsibilities?
2. Must an easement allow public access?
3. How can donating an easement reduce a property owner's income tax? (See worksheet)
4. How can donating an easement reduce a property owner's estate tax?
5. How can donating an easement reduce a property owner's property tax?

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Effects of an Easement

RIGHT	EFFECT ON PROPERTY
1. To Sell:	Not necessarily prohibited by the easement but is subject to provisions of the conservation easement.
2. To Mortgage:	May have adverse effect due to inability to obtain maximum financing on favorable terms due to restrictions imposed by the easement.
3. To Bequeath:	Not prohibited by the conservation easement but is subject to provisions of the conservation easement.
4. To Lease:	Often prohibited and will have adverse effect due to inability to lease the property.
5. To Use and Occupy:	Not prohibited by the easement but is subject to provisions of the conservation easement.
6. To Grade, Fill or Excavate:	Often prohibited, unless minimal effect on property.
7. Install New Permanent Roads or Widen Existing Ones:	Often prohibited, with potential negative effect on property.
8. Install New Lake(s):	Often prohibited, unless minimal effect on property.
9. Occupy/Use Existing Improvements:	Often no restrictions.
10. Construct New Improvements:	prohibited, with major effect if the property has development potential.
11. Subdivide and Develop:	Sometimes prohibited, as noted above or may be limited to large tracts, such as 500 acres.
12. To Farm:	Sometimes prohibited, with effect depending on the type and quality of the soil on the property. Not for profit farming for wildlife is often permitted.

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4. Elements of a Conservation Easement

- a) Date
- b) Names of Donor(s) and Donee/Conveyance
- c) Legal Description of Property
- d) Conveyance language
- e) Purpose of the Conservation Easement
- f) Identification of Conservation Values to be protected
 - Open space and scenic preservation
 - Wildlife
 - Ecological/habitat/biodiversity
 - Watershed protection
 - Adjacent protected lands
 - Farmland

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4. Elements of a Conservation Easement

- g) Baseline Documentation (separate document attached to easement)
 - Maps and photographs of all existing human-made features, vegetation, fauna, land use history, natural features.
 - Narrative description of property.
 - Acknowledgment by both parties of the accuracy of the baseline document.
- h) Prohibited Activities (may include the following prohibitions)
 - Subdivision
 - Commercial and Industrial activity
 - Construction or placement of human modifications or structures
 - Roads
 - Cutting of vegetation
 - Land surface alterations
 - Dumping
 - Modification of water courses
 - Off-road recreation vehicles
 - Signs and billboards

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4. Elements of a Conservation Easement

- i) Permitted Uses (may include the following permitted uses)
 - Right of conveyance
 - Right to maintain or replace existing structures
 - Right to add designated structures or improvements
 - Agricultural activities
 - Timber harvest (may include restrictions)
 - Collection of firewood and non-timber products
- j) Enforcement Rights of Grantee
 - Entrance and access to property
 - Prevention of uses inconsistent with the easement.
 - Require restoration
 - Placement of signs identifying the project

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9. Standards and practices for Land Trusts (from the Land Trust Alliance)

- Purpose and Goals:** A land trust must have a clear purpose and goals.
- Board Accountability:** The board of directors must assume legal responsibility and accountability for the affairs of the organization.
- Conflict of Interest:** The board must take care that directors, officers, and staff avoid conflicts of interest.
- Basic Legal Requirements:** A land trust must understand and fulfill its basic legal requirements as a nonprofit tax-exempt organization.
- Fundraising:** A land trust must conduct fundraising activities in an ethical and responsible manner.

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9. Standards and practices for Land Trusts

- Tax Benefits:** A land trust must try to assure that landowners who plan to claim a federal tax deduction for a charitable gift or bargain sale of real property interests are informed about relevant Internal Revenue Code requirements and IRS regulations, and that they obtain their own legal and tax advice regarding the gift's deductibility.
- Board Approval of Transactions:** The board is responsible for every land transaction.
- Conservation Easement Stewardship:** A land trust must carry out a program of responsible stewardship for its easements.
- Land Stewardship:** A land trust must carry out a program of responsible stewardship for its land.

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10. Example: How a conservation easement can reduce income tax

Calculating the Value of the Easement

Appraised fair market value of property	\$ 150,000.00
Appraised fair market value of property with an easement	\$ 60,000.00
Value of tax deductible donation (assuming easement meets conservation purposes test ¹)	\$ 90,000.00

Tax Deduction

Annual adjusted gross income (AGI)	\$ 60,000.00
Amount that can be deducted each year (maximum 30% of AGI)	\$ 18,000.00
Years required to use up deduction (value of easement/yearly deduction)	5 years

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Conservation Purposes Test

The donation of a conservation easement is a tax-deductible charitable gift, provided that the easement is perpetual and is donated "exclusively for conservation purposes" to a qualified conservation organization or public agency. Internal Revenue Code Section 170 (h) generally defines "conservation purposes" to include the following:

- The preservation of land areas for outdoor recreation by, or the education of, the general public.
- The protection of relatively natural habitats, of fish, wildlife, or plants, or similar ecosystems.
- The preservation of open space—including farmland and forest land—for scenic enjoyment or pursuant to an adopted governmental conservation policy; in either case, such open space preservation must yield a significant public benefit.
- The preservation of historically important land areas or buildings.

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3 Most Important Reasons People Grant a Conservation Easement

- They love their land
- They really love their land
- They really, really love their land
- They support conservation/open space purposes
- Fearful their heirs will sell, subdivide, or develop the land
- Tax incentives

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MAP OF MEMBER ORGANIZATIONS

Member Organizations that work statewide: Idaho Fish and Wildlife Foundation, Idaho Foundation For Parks and Lands, Rocky Mountain Elk Foundation, and The Conservation Fund.

