

## **LAND STEWARDSHIP – CONSERVATION EASEMENTS**

*Conservation easements offer a major tool to protect important natural resources, particularly freshwater wetlands.*

Easements on properties are acquired to protect the natural resources and assure the preservation of wetlands and other “critical areas” in the public interest. Guaranteeing that these resources remain intact and viable in your community’s ecosystem is called “stewardship”. Municipal governments often find themselves with opportunities and responsibilities relating to land they own and conservation easements they hold within their town. Preserved lands may also be a part of a regional system of open space preservation, particularly related to wildlife, water resources and recreation.

### **Acquisition of Conservation Easements**

Municipalities acquire open space for a wide variety of purposes using funds from state government, local open space trust funds, and other public sources ([A Handbook for Public Financing of Open Space in New Jersey](#)). Municipalities can acquire conservation easements as part of the development approval process. These usually involve the protection of designated “critical areas” such as a wetland, floodplain, or steep slope area.

In some cases, local governments have benefited from the donation or “bargain sale” of land or easements. In these circumstances, a landowner has expressed a charitable intent to donate land or easement to benefit the local community. Often, the donor has claimed a federal income tax deduction or an estate tax benefit from this donation. The wishes of the donor and the conservation values present on these lands must be protected by the municipality.

Finally, lands are often protected from development that are intended to remain active as agricultural and forestry operations. These lands are an important part of land preservation in New Jersey, providing a host of public benefits. While municipalities are often not the easement holder, they can reach out to the operators of these easements with education, advice and technical assistance to assure that the operation of these working landscapes is indeed an asset to the municipality.

With acquisition comes the responsibility to assure that the conservation values of these lands are protected, *in perpetuity*. These obligations require an appropriate commitment to stewardship. Use of public funding also implies accountability and a duty to maintain and manage the acquired lands in the public interest, requiring some degree of transparency to assure that the public can oversee its investments. While the public has overwhelmingly supported acquisition of land and easements, they may not have a full understanding of the obligations that come with the ownership of conservation lands.

### **Stewardship Obligations**

There are many definitions of just what constitutes stewardship of open spaces. One, from the NJDEP’s Green Acres Program Rules is: *“The municipality shall maintain the land in a condition which is equal to or better than the condition of the land at the time it was acquired or developed with Green Acres funding”*.

Stewardship obligations may be addressed by a variety of appropriate means drawn from experiences and the practices of private non-profit land trusts. In fact, it is possible that the duties and responsibilities held by municipalities are identical to those held by private land trusts. The important differences are that the local government is responsible to its voters and that it has the power, through ordinance, to develop, fund

and operate a stewardship program. Local governments should view these obligations as an opportunity, rather than a problem. Overall, the benefits of a good municipal stewardship program include:

- The public health, safety and welfare is protected and guaranteed
- Conservation values are defended and guaranteed in the long term.
- Good relations with landowners and users of municipal open space are created.
- Land use or management problems are minimized.
- Commitments and obligations are fulfilled in an accountable and transparent way.
- Regulations, either local, state, or those of the I.R.S. are followed.
- A support constituency for open space protection is built and maintained.

Intelligent stewardship of municipal lands held in fee (owned outright) and conservation easements require a structured program at the municipal level. Drawing on private land trusts experiences and expertise, municipalities can craft effective stewardship programs applicable to their situations. Many municipalities have programs and procedures that can be adapted. Additional guidance is available from the [Green Acres Program](#) and from the [Land Trust Alliance](#).

## **Components of a Municipal Land Stewardship Program**

All stewardship programs, including those operated by municipalities have certain characteristics in common. Among the common issues to be addressed are:

### **Funding**

All stewardship activities entail costs. Without the financial to accomplish its objectives, the best-intentioned stewardship program will fail. Since the obligations are permanent a stable source of funding is strongly recommended.

Municipalities may use funds derived from their open space trust fund for stewardship functions, provided the enabling legislation permits such uses. If there is a prohibition against such uses, it is strongly recommended that the issue be re-examined to permit the use of funds for this purpose.

In the case of easements obtained as part of the development approval process, it may be possible to require the applicant to contribute to the stewardship of the conservation easements at the time of approval. This will require an appropriate municipal ordinance.

It may also be possible to structure a "transfer fee" in the original easement agreement that provides funds to inspect the easement at time of transfer, issue a compliance letter, and educate the new landowner to the requirements of the easement.

Finally, there are numerous government grants available for specific stewardship activities. These may be used for specific stewardship activities such as stream corridor stabilization, reforestation, wildlife habitat enhancement and "development" of open space features. These grants are best used within the context of an overall management plan developed for a specific property or area. Non-profit conservation groups are often willing to assist municipalities in obtaining these grants

### **Baseline Documentation Reports**

A fundamental part of any stewardship program is a report on the conditions of a property *at the time of acquisition*. Such reports are like site specific resource inventories and should include a survey map, aerial photography, and descriptions of the environmental features of the parcel like wetlands, forests, soils, geology, water resources and wildlife habitat. Some of these will be common to all properties while others will be added or

dropped depending on the character of the land. An important part of the baseline documentation report is a determination of *conservation values* to be protected. Conservation values are those specific features and natural process functions present on the parcel that are of concern. For example, a parcel that contains habitat suitable for the wood turtle, a threatened species, would require that stewardship actions respect and enhance this habitat. Because some stewardship activities like forest restoration require many years and often decades to complete, an accurate picture of the beginning conditions is essential for future decision making. As an easement holder, the municipality will need to make periodic inspections and comparisons to the original and previous conditions. The base line study provides the means to make these comparisons.

## Monitoring

Evaluating the conditions of a parcel or easement on a regular is not only an essential part of good stewardship but is also a mandatory obligation of the easement holder. The easement agreement needs to specify the access and monitoring provisions. The landowner should always be notified that a monitoring visit is about to take place. The objective of monitoring is to check to see that the conservation values are being protected and to record changes, either positive or negative, on the tract. Comparisons to the baseline conditions are also commonly made. A field visit is made, maps prepared, and photographs taken. A written report is prepared, and necessary action steps specified.

## Landowner and User Relationships

In the case of conservation easements held by the municipality it is important to establish a co-operative relationship with the landowner. Regular contact resulting from the monitoring program is one way to do this. It is important to remember that properties on which there are easements may change hands and the new owner may only be vaguely aware of the easement. The goal of these contacts is to create a cooperative "conservation partnership" with the owners, not an adversarial relationship.

Where the municipality owns land used by the public, efforts to involve the users in the process of stewardship can pay important dividends, preventing conflict, enhancing participation and creating a support base for conservation in the community.

## Enforcement

When a monitoring report reveals what appears to be a violation of a conservation easement, it is vital to apply a level of judgment to the situation. Efforts should be made to resolve the violation without formal legal action. If such efforts fail, the municipality should be prepared to seek legal remedy to enforce the terms of the easement. This will entail costs that should be anticipated in the funding of the program or provided for under other budget lines in the municipal budget. Municipalities should be aware that the original easement agreement should specify penalties that could be assessed, including orders to restore in addition to monetary damages.

## Additional Resources

- [Land Trust Alliance](#) in particular see their [land trust standards and practices](#). Municipalities may join the Alliance and avail themselves to a wealth of information, training and advice.
- New Jersey Conservation Restrictions and Historic Preservation Restriction Act 1979 can be found [here](#)
- Sustainable Jersey Easement Action items [Inventory](#) and [Inspection](#)