

Best Management Practices for Establishing Conservation Easements

A conservation easement is a legal instrument or agreement between a landowner and a qualified governmental entity or conservation organization which contains restrictions on the property. Easements are negotiated on a case by case basis and can include provisions that allow active management such as timbering, grazing or other marketable actions. It is generally the purpose and intent of conservation easements to assure that the subject lands will be retained and maintained forever predominantly in the natural vegetative and hydrologic condition existing at the time of execution of the easement (except often for agreed upon restoration or enhancement actions).

Easements can arise through:

- Voluntary actions of the landowner (e.g., a family or business volunteers to place an easement, self written, over all or some portion of their property addressing the limited or perpetual conservation of one or more of the lands resources.).
- Regulatory processes linked to development processes (e.g., offsets and mitigation linked to land use changes, permitting actions).
- As a result of public need projects such as roads, drainage and stormwater management passage.

Prohibited Activities:

1. Construction or placing of buildings, roads, signs, billboards, or other advertising, utilities, or other structure on or above ground;
2. Dumping or placing of soil or other substances or material as land fill, or dumping or placing of trash, waste, or unsightly or offensive materials
3. Removal or destruction of trees, shrubs, or other vegetation, with exception of nuisance and/or exotic plant species, as may be required by DEP;
4. Excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substances in such a manner as to affect the surface;
5. Surface use except for purposes that permit the land or water area to remain predominantly in its natural condition;
6. Activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat preservation;
7. Acts or uses detrimental to such aforementioned retention and maintenance of land or water areas; and

8. Acts detrimental to the preservation of any features or aspects of the property having historical, archaeological or cultural significance.

Location of Conservation Easements:

The placement of conservation easements required by the regulatory process can be planned, within the limitations of the permitting process, to increase their value to the ecosystem. Lands should be viewed in perspective of the placement of easements on the landscape with the ultimate goal of linking properties to decrease the fragmentation of the ecosystem, preserve ecologically valuable land, and thereby, protect the estuary and reservoir.

1. Intergovernmental agreements and processes should be developed to ensure that County Planning Departments and the equivalent departments in the municipalities receive notice of conservation easements negotiated as part of the permitting processes of the DEP and COE for annotating their zoning maps and future land use maps. One method to accomplish this would be to make re-zoning of the conservation easements in a county to Conservation-Preservation (or the local equivalent) a condition of the issued permit and require proof of re-zoning prior to execution of the permit by the permittee.

2. Adopt conservation easements as Conservation Preservation in the LDRs, by incorporating the final results of this easement inventories and creation into local government's LDRs, and by automatically zoning all new conservation easements identified in the inventory and those to be added in the future as Conservation Preservation in the LDRs and Comprehensive Plan.

3. A plan for the strategic placement of off-site conservation easements as mitigation for permit issuance should be developed to maximize the ecological value of the easement program, to provide for better management, and provide for easier monitoring and enforcement of the easement conditions and restrictions. It is hoped that there is sufficient latitude in the mitigation process to include ecotones and upland buffers in the site selection process for easements, particularly those placed off-site. As a corollary to this recommendation, conservation easements should be used to expand existing protected areas of habitat, interconnect existing patches of habitat, and to maintain the diversity of natural biotic communities in the ecosystem.

4. One method that may be beneficial in achieving a strategic plan for the placement of conservation easements is the use of a Transfer of Development Rights (TDR) program. A basic conservation easement inventory could be a tool in developing the TDR programs by aiding in the identification of sending areas (parcels to be preserved and their development rights transferred to increase density elsewhere) of ecological value or of value in stormwater management.

5. On-site conservation easements should be interconnected within the area to be developed. Isolated patches of easements within the overall development proposal should be avoided. These small fragments of easements do not appear to be ecologically functional, and they are difficult to manage and to monitor.

6. Conservation easements should not include portions of individual residential lots subject to the interpretation of the easement by the homeowner. A serious issue and problems can result from violation of the easement when the easement is spread over many lot owners in a development. It appears that new homeowners may not understand the deed restrictions on their property even though what may be considered unambiguous disclosure is provided to these new homeowners at the time of their purchase.

Locate and map the lands within your jurisdiction that are already subject to conservation easements or have been acquired for conservation purposes. The primary effort may be directed at DEP and COE held conservation easements, because they likely exist in your community and are directed at preserving the land for its natural characteristics, particularly its wetland values. Additional easements may be held as conservation land by other local counties, cities or by private organizations.

The ultimate purpose of such inventory is to provide the community with a reference and expandable database of conservation easements useful for planning purposes involving our local ecosystem and linking to development guiding apparatus such as local comprehensive planning, zoning, mitigating actions, flood and stormwater planning, etc. Ground level photographs can be taken of the conservation easements to initiate a monitoring program to track the status of each easement through time.