

CONSERVATION EASEMENTS: A TOOL FOR PROTECTING GEORGIA'S RIVERS

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Abstract. Georgians are already using a variety of tools-- regulatory requirements, river basin planning, and governmental purchase of river corridor segments-- to protect the state's rivers. Conservation easements providing financial incentives for wise stewardship will complement this array. Provisions of this flexible legal tool vary according to the wishes of the landowner, the natural features of the property and the goals of the land trust involved.

WHAT IS A CONSERVATION EASEMENT?

A diverse group including foresters, farmers, academics, and activists in the northeast corner of the state have formed a land trust to protect the Broad River corridor through a legal mechanism called a conservation easement.

The principle is simple. On one hand is the Broad River Watershed Association, a corporation which has received tax-exempt status from the IRS as a publicly-supported charitable organization. On the other hand is a landowner who holds a bundle of rights to use his land as he pleases. This bundle includes the right to build, to cut timber, to mine, and to farm on the land, among others.

The landowner recognizes that to pursue these activities too close to the river bank can result in increased siltation and chemical contamination of the river as well as destruction of wildlife habitat. So he voluntarily enters into an agreement, called a conservation easement, with the land trust not to pursue one or several of these activities within a certain distance of the river, or perhaps within the whole tract of land if it is particularly sensitive. That agreement is binding on future purchasers of his property and is recorded with the deed. It is the responsibility of the land trust to routinely monitor the property to ensure that the agreement is not violated and to pursue legal recourse to compel compliance if necessary.

BENEFITS TO THE LANDOWNER

Because the landowner has given a gift of value to a tax-exempt organization, he can take a deduction on that

gift when he pays his taxes. He is monetarily rewarded for being a good steward of the land. The value of the gift is the difference between the fair market value of the land without the restriction and the fair market value after the restriction. The landowner can deduct this value up to 30% of his adjusted gross income over a period of six years.

High estate taxes, which have forced some heirs to sell treasured family land, may be similarly decreased through the use of conservation easements. If a property owner restricts the use of his property through a conservation easement prior to his death, the estate tax must be assessed on the restricted value of the property. When the landowner bequeaths a conservation easement to a land trust in his will, the value of the easement will be deducted from the estate.

Property taxes may be decreased as well since restricting various development rights diminishes the fair market value of the land.

FLEXIBILITY OF CONSERVATION EASEMENTS

While this flexible management tool is new to Georgians, it has been effective for many years in other parts of the country. There are over 800 land trusts in the United States; more than 100 were specifically created to protect some aspect of riverine resources.

One example is the Tennessee River Gorge Trust which was incorporated in 1986 to protect the viewshed of the Gorge in southwest Tennessee. One conservation easement between a landowner and the Gorge Trust requires that new buildings be set back a certain distance from a cliff or river so that natural vegetation blocks it from view, and that the color of a new building blend with its natural surroundings. Another prohibits large satellite dishes or clearings over a certain size.

The Delaware and Raritan Greenway is establishing a connecting network of greenways along a 60-mile canal in New Jersey. Some of these greenways will include pedestrian trails. Some conservation easements between landowners and this land trust requires that the public be granted pedestrian access to a specified segment of a tract and provides that the land trust indemnify the property

owner in the event that a pedestrian is injured using the trail and liability ensues. A conservation easement does not have to provide for public access, however.

The Montana Land Reliance is protecting 200 miles of stream bank through 64 easements across the state. One easement across a ranch protects twenty miles of habitat and spawning grounds for the last major population of river grayling in the lower 48 states. This particular easement allows the landowner to continue agricultural operations on the land but prohibits subdivision of the tract. The agreement specifies grazing strategies for the rancher to use to protect the riparian area. These include both fenced and unfenced buffer zones to reduce erosion and runoff and special provisions for stock watering.

GOVERNMENTAL COOPERATION

In most communities, local and state government is very supportive of the concept of conservation easements. In fact the Thousand Islands Land Trust in New York's St. Lawrence River Valley obtained its first easement when the St. Lawrence Eastern Ontario Commission conditioned its approval of an island subdivision project on a requirement that the developers enter into an easement including set backs and forest protection.

THE BROAD RIVER WATERSHED ASSOCIATION'S EASEMENT STRATEGY

The Broad River Watershed Association's Board of Directors has adopted a set of criteria for identifying lands particularly vulnerable to developmental pressures. These include land that contains endangered, threatened or rare species; wetlands; groundwater recharge areas; and lands of agricultural significance. The group is now in the process of mapping the watershed to determine where those resources are; it will target its solicitation of conservation easements accordingly.

What kind of provisions might a conservation easement with the Broad River Watershed Association include? An easement on agricultural land adjacent to the river might require a natural vegetated buffer between the edge of a cultivated field and the river and specify particular best management practices the landowner must follow to control runoff from livestock activities. On a tract of land where the shoal lily grows, an easement might stipulate that that portion of the property will remain undisturbed but allow residential development on other portions of the site. The possibilities of fashioning a conservation easement tailored to the wishes of the landowner, the natural features of the property, and the goals of the land trust are endless.

REFERENCES

- Janet Diehl and Thomas S. Barrett: *The Conservation Easement Handbook*, 1988.
The Land Trust Alliance: *Starting A Land Trust*, 1990.
Steve Small: *Preserving Family Lands*, 1988.
Phone Conversations with staff of the Tennessee River Gorge Trust (615) 266-0314; the Delaware and Raritan Greenway (609) 452-1441; the Montana Land Reliance; and Ken Deedy of the Thousand Islands Land Trust (212) 794-5342.