

Easements 101

Conservation and Preservation Easements

Conservation and preservation easements are powerful legal tools used to protect valuable natural resources and historic properties and enable private landowners to make lasting contributions to environmental stewardship and historic preservation.

A conservation easement is a legal agreement between a landowner and a land trust or government agency that permanently limits certain uses of the land to protect its conservation values. The landowner retains ownership of the property but agrees to abide by the terms of the easement, which typically restricts development, logging, mining, and other activities that could harm the land's conservation values.

Following is an overview of Conservation & Preservation Easements. If you are a Chestnut Hill property owner interested in exploring a conservation or preservation easement, please [contact us](#) to speak with a knowledgeable staff member.

Key Features of Conservation Easements:

- **Perpetuity:** Conservation easements are permanent and run with the land, meaning they bind all future owners forever.
- **Customization:** Easements are tailored to the specific characteristics of each property and can be customized to address the unique conservation values and concerns associated with the land.
- **Conservation Values:** Easements protect the conservation values specific to each property. These can include biodiversity, wildlife habitat, water quality, scenic views, historic sites, agricultural lands, and cultural resources.
- **Enforceability:** Easements are legally binding documents that are enforceable by the easement holder, such as a land trust or government agency. The holder is responsible for monitoring the landowner's compliance with the terms of the easement.
- **Tax Benefits:** Donating a conservation easement can result in significant tax benefits for the landowner, including federal income tax deductions and estate tax benefits. These benefits are based on the reduction in the property's value resulting from the restrictions imposed by the easement.

What is a Preservation Easement?

A preservation easement, also known as a historic preservation easement, is a type of conservation easement specifically designed to protect historic properties and cultural landmarks. Like conservation easements, preservation easements restrict certain activities that could damage or alter the property's historic character, such as demolition, alterations, or incompatible development.

Key Features of Preservation Easements:

- **Historic Preservation:** Preservation easements aim to safeguard the architectural, historical, and cultural significance of historic properties, including buildings, structures, and landscapes.
- **Compatibility:** Easements may specify guidelines for maintaining, restoring, and rehabilitating historic properties to ensure that any changes are compatible with their historic character.
- **Partnerships:** Preservation easements often involve partnerships between property owners, preservation organizations, historical societies, and government agencies with expertise in historic preservation.
- **Public Access:** Depending on the terms of the easement, owners of historic properties may be required to allow limited public access for educational or recreational purposes to promote appreciation and awareness of the property's historic significance.

What is an accredited land trust?



An accredited land trust is a nonprofit organization that has been officially recognized by the **Land Trust Accreditation Commission (LTAC)** as meeting rigorous standards for organizational excellence, ethical practices, and land conservation effectiveness. Accreditation is a voluntary process that land trusts undergo to demonstrate their commitment to upholding the highest standards of land conservation and stewardship.

The Chestnut Hill Conservancy is the first accredited urban land trust in the country. Its accreditation was renewed in 2023. As of February 2024, 471 accredited land trusts exist in 46 U.S. states and territories. Accredited land trusts protect 84% of the land protected by conservation easements in these states and territories, which is 51,314,675 acres of land. There are 23 accredited land trusts in Pennsylvania.

To become accredited, a land trust must undergo a comprehensive review of its operations, governance structure, financial management, and land conservation practices. This review includes an extensive application process, site visits, and evaluation by independent experts appointed by the LTAC. Accredited land trusts are required to adhere to the Land Trust Standards and Practices, which serve as a guide for ethical conduct and best practices in land conservation.

Achieving accreditation signifies that a land trust has demonstrated its capacity to responsibly steward the land, engage with the community, and uphold the public trust in perpetuity. Accredited status assures landowners, donors, government agencies, and other stakeholders that the land trust operates with integrity and professionalism in its conservation efforts.

Accreditation is valid for five years, after which accredited land trusts must undergo a renewal process to maintain their accredited status. This process ensures that accredited land trusts continue to meet evolving standards and remain effective and trustworthy partners in land conservation efforts.

How does a landowner go about donating a conservation or preservation easement?

Donating a conservation or preservation easement involves several steps to ensure the process is legally sound and beneficial for both the landowner and the entity holding the easement. While the steps below are typical, landowners should contact their local land trust organization for specific recommendations and guidelines.

1. **Initial Consultation:** The landowner meets with representatives from a land trust, government agency, or other qualified organization to discuss the possibility of donating an easement. This meeting helps the landowner understand the purpose and benefits of easement donation and allows the organization to assess the property's conservation or historic values.
2. **Property Assessment:** The organization conducting the easement review evaluates the property to determine its conservation or historic significance, ecological value, scenic qualities, or historic features. This assessment helps both parties understand the potential impact of the easement on the property's use and value.
3. **Negotiation:** Once both parties agree to move forward with the easement donation, they negotiate the terms of the easement agreement. This involves discussing the specific restrictions and allowances that will be included in the easement, such as limitations on development, permitted land uses, and maintenance requirements.
4. **Drafting the Easement:** Legal professionals, including attorneys specializing in conservation or historic preservation law, draft the easement document based on the negotiated terms. The

document outlines the rights and responsibilities of both the landowner and the easement holder and includes detailed provisions to protect the conservation or historic values of the property.

5. **Review and Approval:** The draft easement document is reviewed and approved by both parties, as well as any other stakeholders involved in the process, such as lenders, heirs, or regulatory agencies. This ensures that everyone understands and agrees to the terms of the easement before it is finalized.
6. **Easement Recording:** Once the easement is finalized, it is recorded with the appropriate local government office, such as the county recorder of deeds or land records office. Recording the easement ensures that it becomes a permanent part of the property's chain of title and is legally binding on all future owners.
7. **Tax Considerations:** The landowner may be eligible for tax benefits as a result of donating the easement. It's important for the landowner to consult with tax advisors or financial professionals to understand the potential income tax deductions, estate tax benefits, or property tax reductions associated with the easement donation.
8. **Monitoring and Enforcement:** After the easement is in place, the easement holder is responsible for monitoring the property to ensure compliance with the terms of the easement. This may involve conducting periodic inspections and working with the landowner to address any issues or violations that arise.

What are the costs associated with easements?

The cost of creating a conservation or preservation easement can vary widely depending on various factors, such as the complexity of the easement, the size and value of the property, legal fees, appraisal costs, and any associated transaction expenses. Here are some key cost considerations for both landowners and land trusts:

For Landowners:

- **Legal Fees:** Landowners typically incur legal fees to have their attorney review the easement agreement and related documents. These fees can vary depending on the complexity of the agreement and the attorney's hourly rates.
- **Appraisal Costs:** Landowners who desire to claim a federal income tax deduction must obtain an appraisal of the property to determine its value before and after the easement is established. This is necessary for calculating the value of the easement donation for tax purposes. Appraisal costs can vary depending on the size and complexity of the property.
- **Transaction Costs:** There may be additional transaction costs associated with the easement donation process, such as recording fees, title search, survey, and administrative expenses.
- **Stewardship Fund:** Some land trusts may require landowners to contribute to a stewardship fund to cover ongoing monitoring and enforcement costs associated with the easement.

For Land Trusts:

The total cost of creating a conservation or preservation easement can vary significantly depending on the specific circumstances and requirements of the easement agreement. Landowners and land trusts should carefully consider these costs and budget accordingly when planning for an easement donation.

- **Legal and Administrative Costs:** Land trusts incur costs related to legal review, drafting easement agreements, and administrative overhead associated with processing easement donations.
- **Monitoring and Enforcement:** Land trusts are responsible for monitoring and enforcing easement agreements forever, which involves regular site visits, documentation, and enforcement action if violations occur. These ongoing costs are typically covered by the land trust's operating budget or through dedicated stewardship funds.
- **Stewardship Fund:** Land trusts may establish stewardship funds to cover long-term monitoring and enforcement costs for all easements under their stewardship. Donations, grants, or endowments may support these funds.

Are the owners of adjacent properties involved when an easement is donated?

In general, adjacent property owners are not involved in the creation of an easement. Neighboring property owners may benefit indirectly from conservation and preservation easements, such as through enhanced property values, protection of scenic views, or improved environmental conditions.

What if a property owner wants to change the terms of the easement?

Because conservation and preservation easements are binding legal documents to create permanent protections, changing the terms of an existing conservation or preservation easement is purposely challenging. Should a property owner propose to modify the terms of an easement, multiple steps must be taken, including the following:

1. **Review the Easement Document:** Carefully review the terms of the existing easement document to understand its provisions and any restrictions on modifications. The language of the easement document, including any clauses related to amendments or modifications, will guide the process.
2. **Consult with the Easement Holder:** The property owner interested in making changes must contact the organization or entity that holds the easement, such as a land trust or government agency. Together, they will discuss the proposed modifications and explore possible options for amending the easement.
3. **Review of Amendment:** The holder and the property owner will discuss the proposed modifications, the potential impacts on conservation values, and any conditions or requirements for amending the easement.

4. **Legal Process:** Once both parties establish tentative terms of a proposed amendment, the legal process of formalizing the changes begins. An amendment will be drafted to describe the revised terms of the easement. The document must be reviewed and approved by the owner's legal counsel and by legal counsel representing the easement holder.
5. **Approval Process:** Depending on the terms of the original easement and applicable laws, the proposed amendment may need to undergo additional review and approval processes. This could involve obtaining consent from regulatory agencies, local authorities, or other stakeholders with an interest in the conservation values protected by the easement. An amendment that does not provide increased conservation value or may confer impermissible private benefits will be referred to the appropriate court for review before it can be approved.
6. **Recording the Amendment:** Once approved, the amendment is recorded in the appropriate public records, such as the county land records office. Recording the amendment ensures that the revised terms are legally binding and enforceable against future property owners.

It's important to note that amending an existing conservation or preservation easement can be complex and may not always be feasible, especially if the proposed changes conflict with the conservation purposes of the easement or are not in compliance with legal requirements. Landowners considering an amendment to their easement should seek guidance from legal professionals experienced in conservation easement law and work closely with the easement holder throughout the process.

Do neighboring property owners have any rights under preservation or conservation easements?

Neighboring property owners do not have legal rights to amend preservation or conservation easements unless such rights are explicitly granted in the easement.

Are conversations between property owners and easement holders confidential?

Best practices indicate that all conversations between property owners and easement holders should be kept private or confidential. Here are some considerations regarding privacy and confidentiality in consultations related to conservation or preservation easements:

- **Legal Privilege:** In some cases, communications between property owners and easement holders may be protected by legal privileges, such as attorney-client privilege or work-product privilege. However, the applicability of these privileges can vary depending on the nature of the communication and the legal context.
- **Public Disclosure:** Certain information related to conservation easements, such as the terms of the easement and relevant legal documents, may be subject to public disclosure requirements. Easements and amendments are recorded documents available to the public unless ordered by a court. Some government agencies or land trusts may be required to disclose easement documents in response to public records requests or as part of regulatory review processes.
- **Voluntary Disclosure:** Even if confidentiality is not legally required, property owners and easement holders may choose to keep consultations confidential as a matter of discretion or to

maintain positive relationships. However, they should be mindful of any legal or ethical obligations that may apply to the disclosure of information.

- **Exceptions:** There may be exceptions to confidentiality, such as situations where disclosure is required by law, court order, or regulatory authority. Parties should familiarize themselves with relevant legal requirements and obligations regarding confidentiality and disclosure.

Ultimately, the privacy and confidentiality of discussions between property owners and easement holders will depend on various factors, including the specific agreements between the parties, applicable legal requirements, and the nature of the information exchanged. It's important for parties to communicate openly and clearly about expectations regarding privacy and confidentiality and to seek legal advice if necessary to ensure compliance with relevant laws and regulations.

Why would a conservation or preservation easement be amended when it is intended to be permanent?

Conservation or preservation easements may be amended to ensure the permanent protection of important resources and to best meet the conservation objectives of the easement. Some common reasons why an easement might be amended include:

- **Adaptation to Changing Conditions:** Unanticipated changes, such as changes in technology or new understandings in conservation science, may necessitate an amendment to the terms of the easement while protecting the easement's purpose.
- **Correction of Errors:** If errors or inconsistencies are discovered in the language or mapping of the easement, an amendment may be needed to rectify these issues and ensure clarity and enforceability.
- **Improved Conservation Outcomes:** Amendments may be proposed to enhance the conservation value of the protected property, such as adding additional land to the easement area, incorporating new conservation practices, or updating management plans to reflect best practices.
- **Compromise and Negotiation:** In some cases, landowners and easement holders may negotiate amendments to address conflicting interests or accommodate reasonable requests while still preserving the overall conservation values of the property.
- **Legal or Regulatory Compliance:** Changes in local, state, or federal laws or regulations may necessitate amendments to ensure that the easement remains in compliance with legal requirements and maintains its tax-deductible status.
- **Unforeseen Circumstances:** Unanticipated events, such as natural disasters or significant changes in land use patterns, may require amendments to address unforeseen challenges or opportunities that arise after the easement is established.
- **Conservation Succession Planning:** As landownership changes hands over time, new landowners may seek amendments to the easement to better align with their conservation

goals and management preferences while still upholding the conservation objectives of the original agreement.

Do amendments to conservation and preservation easements set a dangerous precedent?

Amendments to conservation and preservation easements do not inherently set a dangerous precedent. Instead, they can be a legitimate mechanism to address changing circumstances, correct errors, or accommodate reasonable modifications while still fulfilling the overall conservation objectives of the easement. However, there are potential considerations to keep in mind regarding amendments:

- **Maintaining Integrity:** Any amendment should be carefully considered to ensure it does not undermine the fundamental conservation values and purposes of the easement in perpetuity.
- **Legal Implications:** Depending on the legal framework governing easements and the specific terms of the original agreement, amendments may require approval from regulatory authorities. Legal counsel should be consulted to navigate these requirements and ensure compliance.
- **Precedent Setting:** While amendments themselves may not be inherently dangerous, establishing a pattern of frequent or significant amendments could potentially undermine the credibility and enforceability of conservation easements over time. It's important to consider the long-term implications and cumulative effects of amendments on the integrity of the conservation program.
- **Public Perception:** Public perception of amendments can influence support for conservation efforts and the reputation of easement holders and organizations involved. Careful communication and engagement with stakeholders can help mitigate concerns and build an understanding of the reasoning behind proposed amendments.

How often are conservation and preservation easements amended?

Conservation easements are permanent, and any amendments are pursued judiciously and in accordance with established policies and procedures to ensure that they maintain the integrity and effectiveness of the original agreement.

The decision to pursue an amendment to a conservation or preservation easement depends on the specific circumstances of the protected property, the regulatory requirements governing the easement agreement, and the requirements of federal law. Open communication, collaboration, and careful consideration of the potential impacts on conservation outcomes are key factors in determining the frequency and necessity of amendments to easements over time.

Additional Resources:

Land Trust Alliance (Alliance): The Alliance is a national organization that provides comprehensive resources and guidance on land conservation, including information about conservation easements. Their website offers educational materials, webinars, publications, and tools for landowners, land trusts, and conservation professionals.

Land Trusts: A land trust is a nonprofit organization that works to permanently conserve land. Land Trust staff are available to guide and support landowners interested in conservation easements. Contacting a **nearby land trust** can be a valuable way to learn about easement options specific to your region.

Government Agencies: State and federal government agencies, such as the U.S. Fish and Wildlife Service, Natural Resources Conservation Service, and state departments of natural resources or environmental protection, such as the **PA Department of Conservation and Natural Resources**, often provide information and assistance related to conservation easements. These agencies may offer landowners online resources, workshops, and technical assistance.

Conservation Organizations: Organizations focused on conservation and environmental protection, such as **The Nature Conservancy**, **Conservation Fund**, and **Trust for Public Land**, may offer educational materials and resources about conservation easements on their websites. In Pennsylvania, **WeConservePA** is an advocate and voice for conservation.

Preservation Organizations: Organizations focused on preserving the built environment, such as the **National Trust for Historic Preservation**, **Preservation Pennsylvania**, and **the Preservation Alliance for Greater Philadelphia**. **PreservationDirectory.com** is also a good resource for locating preservation organizations.

Educational Institutions: Universities and colleges with programs in environmental studies, conservation biology, or natural resources management may provide educational resources and research publications about conservation easements.

Publications and Books: Numerous books and publications cover the topic of conservation easements in detail. Some recommended titles include "**Conservation Easements: Tax and Real Estate Planning for Landowners and Advisors**" by David J. Dietrich, "**The Conservation Easement Handbook**" by Elizabeth Byers and Karin Marchetti Ponte, and "**A Changing Landscape: The Conservation Easement Reader**" by Lauri A. Ristino and Jessica E. Jay.