

# Stewardship Funding Arrangements

## Options for Financing the Obligations of Conservation Easement Holders

A property owner may agree to one or more funding arrangements that require the owner or successive owners of an eased property to make one or more payments to the easement holder to support stewardship of the property. These arrangements may be customized to fit the stewardship demands created by the particular conservation easement and the financial circumstances of the owner.



<b>Introduction.....</b>	<b>1</b>	<b>Implementation .....</b>	<b>10</b>
<b>Adequate Funding Is Key to Viability .....</b>	<b>2</b>	Ensuring That the Arrangement Is Honored .....	10
Conservation Easements Create Obligations.....	2	Documenting the Arrangement .....	10
Determining Adequacy .....	2	Separate Document Versus Incorporation into the Grant of Conservation Easement .....	10
Past Experience.....	2	Model Stewardship Funding Covenant .....	11
Calculating Needs for a Specific Easement.....	2	Less Typical Implementations.....	11
Earnings Rate on Prudent Investment .....	3	Implementing at a Later Date.....	11
Calculating the Needed Sum.....	3	Purchased Easements.....	11
<b>The Challenge of Obtaining Adequate Funding.....</b>	<b>3</b>	Tax Deduction for Charitable Contribution.....	11
Looking to the Landowner .....	3	<b>Owner – Holder Communications .....</b>	<b>11</b>
Single Payment Neither Adequate or Affordable .....	3	Beyond the One-Time Cash Contribution.....	11
Obligations That May Never Materialize.....	4	Communication Resources .....	12
Making Adequate Funding Affordable.....	4	<b>Conclusion.....</b>	<b>12</b>
Stretching Payments over Time.....	4		
Changing the View of Affordability.....	4		
Changing the Discussion.....	4		
<b>A Menu of Options .....</b>	<b>5</b>		
Deferred Payments.....	5		
Deferred Single Payment .....	5		
Periodic Installment Payments.....	6		
Installment Payments Due on Transfer .....	6		
Regular Payments .....	6		
Conveyance Payments .....	6		
Conditional Payments .....	7		
Transfer Payments .....	7		
Hugely Successful.....	7		
One Potential Concern .....	8		
General Considerations .....	8		
Exceptional Transfers.....	8		
Inflation .....	8		
Interest .....	9		
Sale of Property with Installment Payments or a Single Deferred Payment Pending.....	9		
Other Notes Regarding Conveyance Payments.....	9		
Comparing Conveyance and Transfer Payments.....	9		
Conveyance Payments Provide Backup Notice.....	9		

## INTRODUCTION

When landowners grant a conservation easement, they empower the easement holder to uphold the easement’s conservation objectives. The holder’s exercise of the power—the property monitoring, reviews, enforcement actions, and other stewardship activities in support of the objectives—requires money.

To finance stewardship, most land trusts collect from the owners a single contribution at the time the conservation easement is granted. The contribution is invested, with the returns used to fund the land trust’s routine stewardship activities; the principal typically is left untouched, except if needed to fund enforcement actions.

A contribution of sufficient size to cover the holder’s long-term stewardship costs, if required in its entirety at the time of easement acceptance, is not affordable for

many prospective donors. However, bringing the contribution down to an affordable level will leave a funding shortfall, impairing the holder's ability to effectively provide stewardship in the long run. The key to achieving both affordability for the owners and adequacy for the holder is to spread payments in support of stewardship over time. A variety of stewardship funding arrangements are available for this purpose.

This guide, together with the guide [\*Legal Considerations for Stewardship Funding Arrangements\*](#) (“[\*Legal Considerations\*](#)”) and the [\*Model Stewardship Funding Covenant with Commentary\*](#), will help the reader understand the opportunities, implementation pathways, strengths, and limitations of stewardship funding arrangements and their role in enabling holders to meet their stewardship obligations over time.

## ADEQUATE FUNDING IS KEY TO VIABILITY

### Conservation Easements Create Obligations

Land trusts partner with landowners to conserve the farmland, forest, and other green spaces that people love. Most often they use a conservation easement, a tool that limits certain uses on a property for conservation purposes while keeping the property in the owner's ownership and control. The conservation easement is a powerful, dynamic, and flexible conservation tool. However, it places a tremendous obligation on land trusts—the responsibility to regularly monitor eased properties, maintain relationships with owners, review proposals that can potentially impact a property's conservation values and, ultimately, enforce the easement's terms by whatever means necessary.

In the short term, a land trust may be able to adequately monitor and manage its conservation easement holdings without much in the way of dedicated stewardship money, thanks to highly committed volunteers. However, conservation is all about the long term—about treatment

of the land over decades and centuries. A land trust cannot responsibly assume that volunteers will always be at hand to monitor properties or that volunteers will be able to appropriately handle problematic easement violations.

### Determining Adequacy

Adequate stewardship funding is a must for the long-term viability of a conservation easement. But how much is “adequate”? Easement holders generally consider multiple factors when determining how much funding to request for stewardship of a particular easement.

#### Past Experience

A holder may look at its past experience or that of a wide variety of easement holders to estimate an average amount of stewardship funding needed per easement per year. (See the guide [\*Costs of Conservation Easement Stewardship\*](#) for a discussion of holder experiences.) Past experience, however, does not present a complete picture of future needs. One, holders have little experience with easements created more than two or three decades ago. Some costs may increase (or decrease) on a time scale greater than the age of most easements. For example, as the owners who negotiated and signed easement documents give way to new owners less committed to the easement's objectives, the number of violations—major and minor—may be expected to rise. Two, an individual easement may have particular characteristics that make it more or less expensive to steward in the long run.

#### Calculating Needs for a Specific Easement

Several factors may differentiate the stewardship costs of one easement from another, including the following examples:

- As the number of permitted lots and, consequently, landowners increases, so do costs of ordinary monitoring and the probability of extraordinary enforcement actions.
- Restrictions specially customized to meet donor requirements may require greater investment of time and education for new owners and may increase the likelihood of violation.

- Permitted activities such as timber harvests and extractive activities may require increased oversight and increase the likelihood of enforcement action.

Many holders factor in these items and other characteristics of an easement in projecting stewardship funding needs for the specific easement. See WeConservePA's [model stewardship cost calculator](#) for an example of how the calculation is made.

### Earnings Rate on Prudent Investment

When calculating stewardship funding needs, holders often first determine an estimated average stewardship cost per year for the specific easement. Holders then seek to determine what amount, when prudently invested, will generate an annual income stream that is at least equal to the estimated average cost.

The holder may look at earnings on its own investment portfolio, but a better approach is to look to the annual rates of return achieved and the policies adopted by other non-profit organizations engaged in prudently managing endowment funds. The “prudent investor” approach may not only be a good idea—it is legally required if the stewardship funds are held by the organization as trustee or fiduciary. (See Pennsylvania’s “[Prudent investor rule](#),” 20 Pa. Cons. Stat. § 7203.)

### Calculating the Needed Sum

To arrive at the amount that the holder would need to prudently invest to generate an annual income stream adequate to cover the annual cost estimate, divide the annual income figure by the expected rate of return on prudent investments. For example:

The holder determines that it needs \$1,200 each year on average to ensure responsible stewardship of a conservation easement. (\$1,200 may seem high, but keep in mind that a holder could spend \$50,000 or more in legal and court fees in just one year to address a single violation.)

The holder reviews its own investment experience over the last 10 years plus online sources discussing prudent investments and, using this information, its governing board adopts four (4%) percent per year as its anticipated earnings rate for its long-term investments.

Calculation: \$1,200 divided by 4% equals \$30,000.

\$30,000 would have to be prudently invested to achieve an adequate annual income stream.

## THE CHALLENGE OF OBTAINING ADEQUATE FUNDING

### Looking to the Landowner

Land trusts seek funding from an array of sources to meet stewardship obligations. This *sometimes* results in gifts from foundations and individuals in support of stewardship. However, the most practical and reliable source of stewardship funding is to be found with the people who choose to conserve their land and their successors in land ownership.

### Single Payment Neither Adequate or Affordable

Most land trusts ask the landowners who are conveying a conservation easement for a cash contribution to support stewardship of the easement and collect a single payment from the owners at the time the conservation easement is granted. (The contribution is invested, with the returns used to fund the land trust’s routine stewardship activities; the principal typically is left untouched except if needed to fund enforcement.)

The merit of the single-payment approach is the immediacy of payment, which eliminates the risk of future non-payment. However, the approach generally fails to meet stewardship needs because:

- A payment of a size adequate to meet long-term stewardship needs is not affordable for many prospective donors. (And, even if affordable, may be too large to be acceptable to those donors.)
- Lowering the payment to an affordable level is a formula for underfunding the land trust's stewardship needs. Inadequate stewardship funding jeopardizes the land trust's ability to ensure that the conservation objectives of its conservation easements are respected in the long run. The grant of a conservation easement may look good on paper, but the paper will do little if the holder of the easement lacks the financial power to exercise its rights and duties under the easement.

## Obligations That May Never Materialize

Compounding the affordability problem, holders may face the challenge of obtaining funding to cover increased stewardship demands that may never materialize. For example, owners sometimes wish to retain the right to subdivide the conserved property into two or more lots to provide for potential future family housing needs or to ensure the ability to generate cash from the property if personal finances become challenging. This right to subdivide may never be exercised. Family members may ultimately decide that they don't want to build on the land and finances may stay on a solid footing.

Whether or not such a subdivision right is ever exercised has strong bearing on a holder's finances. A subdivision of a conserved property into two lots, for instance, can nearly double a holder's long-term expenses. However, many owners will not want to double their upfront stewardship contributions to cover the *potential* of future subdivision—a subdivision that may not ever take place.

## Making Adequate Funding Affordable

### Stretching Payments over Time

Rather than relying strictly on upfront cash payments, it makes sense to structure arrangements that enable owners to stretch out their financial commitment over time and

even extend the commitment to people who in the future accept ownership of the conserved land. This enables owners to make a financial commitment that will fully address the stewardship needs for the property, likely a much larger financial commitment than they would have been able to deliver with a single payment at the easement closing.

### Changing the View of Affordability

In focusing on a one-time, lump-sum stewardship contribution, land trusts have effectively measured affordability by the standard: what can the easement grantor afford to pay on the date the easement is granted? But that is not how affordability is measured generally. Houses, cars, and consumer items all become affordable when payments are spread out over time. This guide, together with the [\*Model Stewardship Funding Covenant with Commentary\*](#), is intended to change the way land trusts and owners discuss the affordability of funding stewardship:

- Uncouple the concept of affordability from the bank account of the easement grantors. The property will be owned by successive owners over time. Look at affordability from the standpoint of a typical landowner—not the easement grantor.
- Stop measuring affordability as of the date the easement is granted. Long-term investments are funded by long-term financing arrangements. Few could afford a purchase of a house measured by their cash on hand as of a particular date. Look for upcoming cash flow events and other ways to spread payments over time to boost affordability.

### Changing the Discussion

In the past, the holder's approach to the owners regarding stewardship funding might resemble this:

The land trust needs \$30,000 to fund its long-term obligations. If you can't afford this, can you afford \$20,000 at closing? If not \$20,000, can you contribute \$10,000 at closing? If not \$10,000, can you contribute \$5,000? If not \$5,000, can you contribute \$2,500? And so on.

Or the holder might dispose of referencing the land trust's full need altogether, instead focusing on a number it identifies as likely to be well received by the owners.

By reframing the view of affordability to encompass a much longer time span, the holder may instead present questions to the owners that squarely address the holder's need for adequacy and respect the affordability concerns of the owners:

- How much of the \$30,000 can you afford to pay at easement closing? When do you foresee additional funds becoming available?
- Will you be able to afford a payment of \$10,000 next year when you receive your tax deduction?
- Is an additional payment of \$5,000 affordable when each of the two reserved lots are sold?
- Is a payment of \$500 per year affordable? What if we defer collection of the \$500 per year (with interest) for 20 years or earlier upon transfer?
- Is a payment of \$1,200 affordable to defray our typical expenses that occur whenever the property is sold? It can be paid out of proceeds of sale.
- Could we add in a 2% share of the proceeds of a timber harvest or extractive use to bridge the gap between what's been committed so far and where we need to be to accept the easement donation?

## A MENU OF OPTIONS

The hypothetical questions above illustrate that a variety of options are available to owners and holders once they adopt new ways of thinking about stewardship funding arrangements. These arrangements may be organized into five categories:

- Deferred Payments
- Regular Payments
- Conveyance Payments
- Conditional Payments

### • Transfer Payments

These stewardship funding arrangements are not mutually exclusive and may be used in any number of combinations to meet the goals and needs of owners and holders.

## Deferred Payments

With deferred payment arrangements, the holder and owners reach agreement as to a fixed amount of money that the owners will ultimately pay to meet the holder's financial needs for stewardship (and perhaps to reimburse the holder for expenses incurred during the establishment of the easement). They then reach agreement as to the timing, frequency, and number of payments as well as the amount due with each payment.

### Deferred Single Payment

Perhaps the owners in the above example can afford a \$10,000 contribution at the time of the easement donation. They may propose deferring the \$20,000 balance until an anticipated cash flow event occurs:

- They anticipate receiving within the next calendar year a tax refund greater than \$20,000 attributable to their charitable donation of conservation easement.
- They anticipate selling the property and moving to a retirement community within five years. Their anticipated proceeds of sale exceed \$100,000; thus, payment of the \$20,000 balance from proceeds of sale will not be a hardship.

A deferred single payment option may be a good fit for these and similar situations. While the payment date may be tied to the probable occurrence of a tax refund, sale, or other event, the payment is due whether or not the event occurs. If the intention is that no payment is due *unless* the event occurs, a conditional payment arrangement (described later in the guide) is the appropriate choice.



## Periodic Installment Payments

A series of installment payments may better match the owners' financial situation. The frequency, number and timing of payments may be tailored in any number of ways. Together with a \$10,000 contribution at the time of the easement donation, owners and holder could agree that the remaining \$20,000 would be paid in any number of ways:

- Five payments of \$4,000, each due on the anniversary of the closing of the easement;
- Twenty payments of \$1,000 each, due annually on September 30; or
- Three payments of \$10,000 each, due at five-year intervals.

Payments do not have to commence immediately. Take, for example, a scenario where the owners recently purchased the farm to be conserved and need to direct all of their available cash into capital repairs and equipment purchases for the first five years. An acceptable solution may be to have annual payments start on the fifth anniversary of the easement date instead of the first anniversary.

If the owners want the payments to be \$1,000 annually but the holder doesn't want payments to extend out more than 20 years from the easement closing date, owners and holder could agree to 14 annual payments of \$1,000 followed by a fifteenth and final payment of \$6,000.

## Installment Payments Due on Transfer

The owners and holder may set installment payments to come due upon each transfer of the eased property rather than according to a fixed time period. For example, the stewardship funding arrangement could provide for \$20,000 to be spread over five transfers with \$4,000 coming due with each transfer. To avoid the uncertainty of when the holder will receive payment in full, the arrangement could include an outside date for when payment of the remaining balance is due.

This arrangement bears some similarity to the arrangements described in the "Transfer Payments" section

below and, as such, users should review the issues discussed in that section.

## Regular Payments

If the holder needs \$1,200 per year to adequately fund stewardship, why not simply agree to establish an annual payment of \$1,200 that continues for the *life of the conservation easement*? Or, if the holder is concerned about collecting annual sums, what about a payment of \$6,000 every five years? A program of regular payments allows routine monitoring and administration to be funded on a pay-as-you-go basis (with a portion of each payment invested by the holder to address enforcement needs when they arise).

The payment could be made due each year on the anniversary of the easement's creation or on some other date or some other frequency mutually acceptable to the parties. Regarding a holder's collection of the payment, a few approaches could be considered:

- The owners could grant the holder the right to collect annually, but the holder could choose to defer collection of the payments for a period of time not extending beyond the transfer of the eased property.
- The owners and holder could agree that, at the owners' election, payments may remain outstanding until transfer of the property.

In either case, the holder may want to deliver to the owners a periodic statement showing the amount owed to avoid misunderstandings when the holder ultimately seeks to collect.

## Conveyance Payments

Another stewardship expense that can be shifted to a pay-as-you-go basis is the holder's investment of time and expense when an eased property transfers to new owners. The holder incurs additional expense in inspecting the property to confirm easement compliance prior to transfer, explaining the easement to real estate brokers and

banks, interpreting the easement to apply it to use scenarios proposed by prospective purchasers, and orienting the new owners to living with conserved land. These costs may be recovered by arranging for a payment to the holder to come due at each transfer of the property.

To establish certainty regarding the payment amount and to avoid the need for the holder to separately track transfer related expenses for reimbursement, the owners and holder may agree to make the conveyance payment a fixed sum. If a fixed sum approach is adopted, care should be taken in calculating the amount to ensure that it represents a reasonable approximation of the costs that the holder will incur. (The guide [Legal Considerations](#) explains the importance of documenting the nexus between a payment amount and the benefit to the eased property.)

## Conditional Payments

Some items included in a stewardship funding request are to cover costs that may not occur for some time, if at all. For example, the holder's stewardship burden will increase dramatically if an eased property is subdivided and lots are transferred into separate ownerships. Other events, such as a timber harvest, construction of a new residence, or drilling for natural gas, may also place new and pressing demands on the holder. The holder faces challenges in obtaining the funding necessary to address these events at the time an easement is established:

- Although likely to occur, there may be a real possibility that the event of concern will never occur. The owners, who are already expected to cover the expenses associated with the day-to-day administration of the easement, may be reluctant to pay upfront for expenses that may never materialize.
- Even if an event does occur that increases the stewardship burden, that event may not happen until far in the future—again a cause for owner reluctance to pay upfront.
- The owners may not have the cash resources to cover the stewardship needs associated with the

event until the event actually transpires and generates cash for the owners.

A stewardship funding arrangement may be more affordable if payments associated with these events come due only upon the occurrence of a triggering event. For example:

- A payment of \$10,000 is due upon the first transfer of a lot separate from the remainder of the eased property.
- A payment of \$5,000 is due upon owners' receipt of a building permit for initial construction of a residence within the eased property's Minimal Protection Area.
- A sum equal to 5% of the gross proceeds of a timber sale and other compensation derived from owners from commercial forestry operations on the eased property is payable to holder to be used first for reimbursement of the holder's review and oversight of the activity and, thereafter, for advancing the easement's conservation objectives.

Conditional payments may be used to address any future activity or occurrence permitted under a particular conservation easement that the holder anticipates will increase the time and money it will need to expend to properly steward the property. The costs may include engaging professional support to review plans or monitor the activity for conformance with the terms of the conservation easement and best management practices.

## Transfer Payments

### Hugely Successful

Since the first known use in 1990, a growing number of land trusts have begun using *private transfer fees* to support their conservation work. As most commonly practiced, a provision is added to the conservation easement stating that the holder must be paid 1% or some other percentage of the fair market value of the property each time the property changes ownership.

Anecdotal evidence suggests that this approach has been hugely successful in generating stewardship funds for land trusts that have adopted it.

### One Potential Concern

In the 2000s, private transfer fees (whether based on a percentage of property value or a fixed rate) came under scrutiny for reasons discussed in the guide [Legal Considerations](#). As a result, in 2012 the Federal Housing Finance Agency (FHFA) prohibited Fannie Mae, Freddie Mac and Federal Home Loan Banks from investing in residential mortgages on properties subject to certain private transfer fee covenants. These entities control 60% or so of the United States mortgage market. Eleven years later, it is unclear whether this meaningfully harms the marketability of eased properties subject to private transfer fee covenants of concern to FHFA.

The private transfer fee, as traditionally and typically structured with conservation easements, risks running afoul of the FHFA rule because the payments aren't necessarily exclusively used to provide a direct benefit to the property (or adjacent or contiguous properties), a core concern of the FHFA rule:

- Classic private transfer fees often go into the holder's accounts with no restrictions on their use. If a use restriction exists, it usually confines use of the payments to the land trust's overall stewardship program rather than the particular property.
- Revenue is typically uncapped. If a large number of sales occur or if property values escalate, the holder could stand to receive payments far in excess of actual need for the property.

The classic fee may be modified to reduce risk. A transfer payment stewardship funding arrangement could provide that:

- All transfer payments go into a segregated account used exclusively for the benefit of the eased property (and perhaps adjacent and contiguous properties if the easement's conservation objectives are applicable to them as well).

- Transfer payment revenue is capped at a sum calculated and documented to be the likely amount needed to properly steward the eased land over time.

These two modifications may be viewed as (1) unduly burdensome for the efficient and effective management of an easement stewardship program and (2) insufficiently supportive of the holder's long-term stewardship funding needs. Regarding the latter item, the actual stewardship costs for any particular property may greatly exceed the predicted average cost per property, making it sensible to pool stewardship funds across all of a holder's easement portfolio. The two modifications also do not eliminate the risk that an overzealous interpreter of the FHFA rule might still take issue with the modified arrangement.

A number of states have imposed restrictions on the use of private transfer fees. See the guide [Legal Considerations](#) for more information.

## General Considerations

### Exceptional Transfers

If payment is to come due upon a transfer of all or a portion of a property, the owners may want the stewardship funding arrangement to provide that certain transfers are excluded, for example a transfer to a close family member or a family trust. The [Model Stewardship Funding Covenant](#) provides a mechanism for addressing these exceptional transfers without undermining the integrity of the stewardship funding arrangement.

### Inflation

The value of the dollar changes with time. Any stewardship funding arrangement that stretches payments out over all but the shortest time periods is best designed to account for inflation (or deflation). Otherwise, the holder may receive payments of far less value than originally anticipated. For example, a 2011 dollar is only worth \$0.61 in terms of 1991 dollars (calculation based on the Consumer Price Index).



Rather than attempt to predict the future value of the U.S. dollar when establishing the stewardship funding arrangement, the holder and owners may agree on an approach for calculating the actual change in value at the time that payment is due. The commentary to the [Model Stewardship Funding Covenant](#) discusses approaches to accounting for changes in the buying power of the U.S. dollar.

### **Interest**

If you purchase an item for \$100 and defer payment for a year, you can expect to pay perhaps \$105 or more to compensate the seller for: first, the detriment of not having \$100 to invest in an income-earning account for the year; and second, for the seller's risk of not being able to collect the \$100 after parting with the merchandise. The same is true with deferred payments and regular payments not made as and when due. The holder doesn't have the stewardship funds available for investment during the intervening period and, once the conservation easement has been accepted, has all of the burdens of stewardship with the risk of not being able to collect the balance outstanding on the stewardship funding arrangement.

As such, it is appropriate for interest to be charged on the deferred balance of a stewardship funding arrangement and on amounts due but unpaid to the holder such as uncollected regular payments.

### **Sale of Property with Installment Payments or a Single Deferred Payment Pending**

The owners, whether planning to or not, may sell their eased property prior to completing their installment payments or before a single deferred payment comes due. The parties may address this possibility in the stewardship funding arrangement by either:

- Requiring that the remaining balance come due with the sale; or
- Providing assurance to the holder that future payments will be made by the successor owners.

## **Other Notes Regarding Conveyance Payments**

### **Comparing Conveyance and Transfer Payments**

A conveyance payment arrangement resembles a transfer payment arrangement (described later in the guide) in that a payment is due upon each transfer. The arrangements differ in that the conveyance payment directly relates to the transfer itself—the conveyance payment's sole purpose is to defray the holder's costs associated with the transfer; transfer payments, in contrast, may be used to cover a broader set of holder activities.

### **Conveyance Payments Provide Backup Notice**

Owners sometimes fail to notify the holder that they are selling their property. A conveyance payment stewardship funding arrangement may serve as a backup notice to the holder that the eased property has changed or is changing hands. In its title investigation, the title company is likely to note the payment requirement, and at closing the settlement agent is likely to collect the amount due for delivery to the holder. Since educating new owners as early as possible reduces the likelihood of violations, the conveyance payment may be as desirable to the holder for its notification function as for the revenue. Thus, if the payment amount is a stumbling block in owner-holder negotiations, the holder may choose to choose a lesser or even nominal payment amount in the interest of receiving notifications of transfer in the future.

The conveyance payment also provides backup notice to the new owners. If, for some reason, they were not already aware of the conservation easement (and perhaps other stewardship funding arrangements), the collection of payment by the settlement agent at closing will serve to inform.

## IMPLEMENTATION

### Ensuring That the Arrangement Is Honored

A funding commitment that is enforceable against the donor who made the promise is relatively easy to create (see the guide [Donation Agreements](#)). Ensuring that the conservation organization can collect payments from *future owners* who did not themselves promise to make payment, presents a greater challenge. Three approaches can be used independently, or in combination, to improve the chances that the conservation organization will successfully collect on a stewardship funding arrangement obligation. The guide [Legal Considerations](#) discusses these approaches at length:

- Design the arrangement as a ***covenant running with the land***: This approach is greatly enhanced when used in combination with another approach.
- Provide for an ***assumption of liability***: In the stewardship funding arrangement, require that all payments come due upon transfer of the eased property unless the transferring owners obtain a legally binding assumption of their personal payment obligations from the prospective owners.
- ***Secure the obligation with a mortgage***: This approach provides the greatest assurance that payments under a stewardship funding arrangement will be honored. It can also be implemented to minimize concerns that it might interfere with the selling of the property or future bank financing.

In many if not most cases, it is highly desirable to use multiple approaches to better ensure that a stewardship funding arrangement will be enforceable over time. The [Model Stewardship Funding Covenant with Commentary](#) provides users with a vehicle for implementing any or all of these approaches.

### Documenting the Arrangement

#### Separate Document Versus Incorporation into the Grant of Conservation Easement

Consolidating conservation and funding covenants in one document—namely, the conservation easement—may serve to downplay the money aspect of the transaction relative to the conservation objectives to be achieved, and owners may be happier signing one rather than two documents. However, documenting a stewardship funding arrangement in a freestanding covenant provides substantial advantages over incorporating it into a conservation easement document: For starters, separate documents guard against changes in the funding covenant inadvertently damaging the integrity of the easement; for example, any release filed in the public records with respect to the funding covenant will never be mistaken as a release of the conservation easement. Other benefits are listed in the table.

Placing Stewardship Funding Covenant Within Grant of Conservation Easement Versus Using Separate Documents	Single Document	Separate Documents
Arrangement bundles key aspects of transaction	✓	
Arrangement minimizes attention to money matters	✓	
Document can secure the promise of payment with a mortgage on the eased property (or other collateral)		✓
Funding covenant can be subordinated without running afoul of IRS regulations for charitable deductions		✓
Funding covenant can be easily released from all or a portion of the property if and when the obligation has been fulfilled with the public records clearly showing that the obligation has been satisfied		✓
Funding covenant can be easily amended without the potential complications arising from easement amendments		✓
Funding covenant can be easily assigned		✓

The [\*Model Stewardship Funding Covenant with Commentary\*](#) helps users craft stewardship funding arrangements customized to their circumstances and record the arrangements in a freestanding document.

## Model Stewardship Funding Covenant

WeConservePA developed the [\*Model Stewardship Funding Covenant with Commentary\*](#) to assist owners and holders in documenting stewardship funding arrangements. Legal counsel must adapt the model to address the particular circumstances of a project.

## Less Typical Implementations

### Implementing at a Later Date

Stewardship funding arrangements do not have to be established contemporaneously with the conservation easement. Land trusts may approach owners who previously granted easements to inquire whether the owners would be willing to build on their generosity by entering into a stewardship funding arrangement. Also, stewardship funding arrangements may be created to bring stewardship funding in line with easement stewardship demands when owners request an otherwise acceptable change to an easement document.

### Purchased Easements

While most conservation easements are donated by owners, land trusts in certain circumstances purchase easements at a bargain price or fair market value. These purchased easements require as much stewardship, if not more, than donated easements. It is perfectly reasonable for land trusts to introduce the need for a stewardship funding arrangement into negotiations for purchase.

## Tax Deduction for Charitable Contribution

Payments required by a stewardship funding arrangement and made by the owners who established the arrangement have the potential to be deductible as charitable contributions for federal tax purposes. Payments made by

subsequent owners are not deductible. See the guides [\*Donation Agreements\*](#) and [\*Legal Considerations\*](#) for more information.

## OWNER – HOLDER COMMUNICATIONS

### Beyond the One-Time Cash Contribution

Focusing on a single cash contribution for stewardship, paid by the owner at the easement closing, generally produces suboptimal results for both owners and holder and fails to ensure the long-term conservation of the property. In contrast, spreading stewardship payments over time can result in improved outcomes for everyone and confidence that the property will be conserved in perpetuity.

Nevertheless, for the holder's staff and volunteers, there is comfort in simply asking for a single cash contribution to be made with the easement donation. People have learned to make this ask and, with the example of others, practice, and refined outreach materials, the ask may seem reasonable and without controversy. In contrast, the notion of spreading payments over time may seem daunting: the concept is new; people do not have experience making the request; and relevant outreach materials are scant.

These same challenges faced those who started asking easement donors for single stewardship contributions in the 1990s. It was awkward to ask someone who was giving up so much land value to lay down cash too. It was worrying that the owner might be offended and withdraw the easement offer. It was uncomfortable to think that to ask was unreasonable.

But staff and volunteers overcame their discomfort and, in the end, discovered that the problems were more in their heads than those of the owners. They discovered that a request firmly grounded in the advancement of the conservation project and delivered with care and forethought was generally not an affront to owners. This is not to say that owners always welcomed or honored the request. (After all, people seldom are thrilled with unanticipated cash outlays.) But the request didn't have to be a

deal breaker. Likewise, the request for owners to entertain one or more stewardship funding arrangements to ensure conservation in perpetuity need not be a deal breaker. On the contrary, it has the potential to be an easier ask than a request for a large one-time contribution.

## Communication Resources

WeConservePA publishes a two-page guide, “[Funding Conservation Easement Stewardship: Your Role as the Land’s Owner and Conservation Champion](#),” to directly educate landowners and for use by land trusts in land-owner outreach. The guide is specifically addressed to landowners and explains the need to establish stewardship funding arrangements.

WeConservePA also offers a [brochure prototype](#) to land trusts to illustrate how an organization might choose to communicate with owners concerning stewardship funding arrangements.

## CONCLUSION

If a conservation easement holder does not have the financial means to fulfill its stewardship obligations in perpetuity, including the enforcement of the terms of the easement in court if necessary, then its conservation successes may prove illusory in the long-term. While it may be reasonable for an organization to take an occasional leap of faith that a gap in stewardship funding for a particular project will be filled at a later date—some way, somehow—it is not prudent to take many such risks. One can always hope that a generous benefactor someday will make a substantial gift to fill the gaps in the organization’s stewardship funding, but a responsible and sustainable conservation program cannot be built on such hope.

Stewardship funding arrangements are a key strategy for ensuring full funding of easement stewardship obligations. While gifts from foundations and individuals to build a stewardship endowment are important, the most practical and reliable source of stewardship funding is to be found in the land being conserved and the people who choose to own the land. Enabling easement donors (and

sellers) to spread payments over time (and ownerships) is key to achieving funding commitments commensurate with the holder’s stewardship obligations.

It took time for most land trusts to grow comfortable with asking landowners for a stewardship contribution. It will also take time for many land trusts to take this new step. Fortunately, land trusts are successfully implementing stewardship funding arrangements and see that their future stewardship fund balances are healthier for it. The sooner that most land trusts seize the opportunities that stewardship funding arrangements present, the better for the conservation of the farms, forests, and other green spaces that people love.



WeConservePA produced this guide with support from the Colcom Foundation, the William Penn Foundation, and the Community Conservation Partnerships Program, Environmental Stewardship Fund, under the administration of the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.

[Andrew M. Loza](#) and [Patricia L. Pregmon](#), attorney at law, are the authors of the original edition. Andrew M. Loza prepared the updates for the subsequent editions.

Nothing contained in this document is intended to be relied upon as legal advice or to create an attorney-client relationship. The material presented is generally provided in the context of Pennsylvania law and, depending on the subject, may have more or less applicability elsewhere. There is no guarantee that it is up to date or error free.

© 2012, 2014, 2018, 2023 WeConservePA

Text may be excerpted and reproduced with acknowledgement of WeConservePA.

v. 10/11/2023