

The Durability of Conservation Easements



Favorable Law and Committed Holders Ensure Lasting Conservation

Landowners grant conservation easements to conservation organizations (“land trusts”) in perpetuity. The conservation objectives of the easement and the associated restrictions on how land can be used are intended to be permanent. Land trusts and their allies across the nation go to great lengths to ensure this permanence.

Introduction

When landowners grant a conservation easement to a land trust, it is only the beginning of the conservation endeavor. In the ensuing years and decades, the land trust will ceaselessly work to ensure that the conservation objectives of the easement and the associated restrictions on land development and use are respected in perpetuity. Fortunately for those concerned with the long run, the law strongly backs land trusts in this work, and land trusts take conservation permanence seriously.

This is crucial because—although the landowners who grant conservation easements are almost always strong conservation advocates—subsequent owners of the land may see the conservation easement as something to be ignored or overcome. They may challenge conservation restrictions, thinking they can cajole, evade, or overpower the land trust or otherwise circumvent the easement.

Such attempts fail due to numerous factors and safeguards:

- The law favors conservation easements.
- Land trusts strongly adhere to ethical standards focused on easement permanence.
- Land trusts ensure that they have the resources to withstand a challenge.
- Individual land trusts are part of a broader community of conservation organizations and backed by a multitude of caring individuals.

The Law Favors Conservation Easements

An Interest in Real Property

A conservation easement is an interest in real estate; it is not just a piece of paper in a file. The easement is accorded respect under the law as is other real property. The land trust—the holder of the easement—may fully defend its property rights in the courts.

Courts Uphold Conservation Easements

Pennsylvania’s courts respect conservation easements. Conservation easement holders and the conservation values they uphold prevail—almost without exception—when a dispute regarding interpretation or enforcement leads to litigation. If structures have been built in violation of an easement, courts can and do order their demolition at the violator’s expense. If parties enter an agreement in violation of an easement, the courts will vacate that agreement. **In many cases, the courts order the violator to pay the easement holder’s attorney fees and costs incurred in enforcing the easement.**¹

Ambiguity Is Resolved in Favor of Conservation

Pennsylvania law prevents a person from sidestepping conservation protections by arguing that the terms in the easement document are unclear. The [Conservation and Preservation Easements Act](#) provides that any ambiguity in the easement’s restrictions is resolved in favor of the conservation objectives of the easement and conservation purposes of the Act.²

Ethical Commitment

Land trusts view the upholding of the conservation objectives and enforcement of the restrictions set forth in easement documents as an ethical obligation. This responsibility is seen as central to their existence as conservation organizations. Their commitment is often expressed in the easement document. For example:

“Holder must exercise the powers granted to it by this Grant to block activities, uses, and Improvements of the Property inconsistent with the Conservation Objectives.”

The volunteers or professionals (as the case may be) operating land trusts will vigorously defend the conservation values placed in their charge. They will seek good relationships with the owners of the land in which they have an interest, but ultimately, if duty calls to do so, they will act to enforce conservation restrictions and uphold their responsible interpretations of the easement document.

Financial Commitment and Resources

The people operating land trusts are reasonable and seek to be fair in resolving differences with landowners. They also strive to resolve disputes outside of court to avoid escalation of conflict and the costs entailed by litigation. Nevertheless, they prepare for the worst and are financially ready to litigate if need be. When acquiring easements and in their regular course of business, land trusts work to build substantial stewardship endowments, easement defense funds, and the like to ensure that they always have the money at hand to prevail in the courts in the event of litigation.³

Terrafirma Insurance for Litigation

In addition to self-insuring with endowments and other funds, many land trusts participate in the Terrafirma Risk Retention Group LLC,⁴ a risk pool for organizations that insures the costs of upholding conservation easements when they have been violated or threatened. Terrafirma

covers the attorney and expert fees, among other expenses, of the land trust in the event that the land trust either starts a lawsuit or is named in a lawsuit. Terrafirma also covers fees for efforts to resolve cases prior to litigation.

Part of a Broader Conservation Community

Land trusts do not operate and defend conservation easements in a vacuum. Seventy Pennsylvania land trusts collaborate and lean on each other as part of WeConservePA. They further collaborate with land trusts across the nation. Even if a land trust lacks Terrafirma insurance, the risk pool will back litigation important to the overall defense of conservation. And, in the face of threats to conservation, individuals will step forward to help a land trust uphold a conservation easement important to them and their community.

Land trusts have successfully upheld conservation easements since the 1960s in Pennsylvania. They have the commitment and means to continue doing so in the coming decades.



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 PA Department of Conservation and Natural Resources, Bureau of Recreation and Conservation.

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v. 2/5/2022

¹ See WeConservePA's guide, [Conservation Easements in Court](#) (2020).

² Governor Ridge signed Pennsylvania's [Conservation and Preservation Easements Act](#) (P.L. 390, No. 29) into law on June 22, 2001.

³ This is why land trusts ask families that are donating conservation easements to make financial contributions as well.

⁴ Terrafirma is owned and operated by more than 540 land trusts.