



Fact Sheet: Conservation Easements

Acquiring a Limited State Interest in Land

Land ownership can be described as a bundle of rights, such as the right to harvest crops or timber, construct buildings, limit access, or subdivide the land. A landowner may sell or donate the whole bundle of rights or just one or two of those rights. By selling or donating a conservation easement, a landowner exchanges certain rights for cash or tax benefits and perpetual land protection.

Conservation easements are a voluntary legal contract between a willing buyer and a willing seller; the contract determines what use and development will be allowed and binds present and future parties. Conservation easements are noted for their uniqueness and flexibility where each easement is tailored to meet the needs of the landowner and the goals and policies of the easement holder. Typical restrictions placed on land with conservation easements include limitations on development, extraction of materials, and types of use.

While traditional easements grant the right to use the land for a certain purpose, conservation easements differ in that they restrict certain uses of the land to protect important natural resources. Further, the conservation easement holder typically cannot use the land or rights conveyed; rather, the holder ensures those rights are held in trust in perpetuity. If a conservation easement is designed to limit future subdivision and commercial development of the land, the holding organization will monitor uses of the land and enforce the easement terms, as necessary.

The Department of Natural Resources (DNR) has the statutory authority to acquire property interests on behalf of the State. In this capacity, DNR has a responsibility to limit the State's exposure to future risk. Conservation easements present potentially greater challenges for management and long-term stewardship. The State rarely has an interest in acquiring a conservation easement over land not owned by a government agency or non-profit organization, except when the parcel is an inholding in, or adjacent to, a state park, state wildlife or game refuge, or similar legislatively designated area.

The State may also choose to hold a conservation easement designed to provide financial protection in the case of grant-funded acquisitions implemented as pass through grants to municipal or other entities. Conservation easements acquired using federal grant funds typically include restrictions on use of the acquired interest and longer-term financial consequences associated with mismanagement. To minimize long-term financial risk to the State, DNR will require language in the conservation easement protecting the State from financial liability should the acquiring entity, such as a municipal government, fail to comply with the terms of the grant. Sample language is attached.

DNR will only acquire conservation easements for the follow purposes that benefit the State and the public:

- Consolidate state land holdings;
- Provide public access to state land;
- Create land ownership and use patterns which will permit more effective management of state land and resources;
- Facilitate the objectives of state programs; or
- Other public purposes related to the mission of the department or another state agency.

Before accepting a conservation easement, evidence must be provided that the easement:

- Has the support of the DNR Commissioner's office;
- Is necessary for one or more of the above reasons;
- Provides a benefit to the State;
- Does not expose the State to unnecessary risk or liability;
- Can be reasonably incorporated into existing agency management strategies; and

- Does not create an unreasonable administrative burden.

In addition, an entity of state government willing to accept long-term management responsibility for the easement must be identified. Commissioner's office support from the managing agency is also required. This agency must demonstrate a strategy for managing the conservation easement, including a strategy for monitoring, enforcement of terms and conditions, and conflict resolution.

Should your Division or Agency wish to acquire a conservation easement, a request for assistance from the Acquisition's Unit within the Realty Services Section in the Division of Mining, Land, and Water should be accompanied by a memo addressing all the points listed below:

- Legal description of the proposed conservation easement.
- Physical description of the parcel.
- Purpose of the easement.
- Long-term management of the easement.
 - Analysis of management and administrative implications.
 - Proposed management strategy.
 - Entity accepting long-term management.
- Analysis of risks and benefits to the State.
- Funding source, including any associated restrictions.
- Current landowner.
 - Landowner willingness to sell or donate.
 - Goals or wishes of the landowner to include in the conservation easement.
- Relevant deadlines.
- Map depicting location of the proposed conservation easement.
- Documentation of Commissioner's office support.

After your memorandum proposing the conservation easement is received, DNR will initiate all appropriate due diligence to warrant a safe and successful acquisition. Steps may include reviewing an appraisal, facilitating a site inspection, title research, and assisting with survey and platting requirements. These steps ensure the conservation easement can be properly managed as a state asset. Once due diligence has been completed, DNR Realty Services Section will work with the managing agency and current landowner to execute a conservation easement held by the State.

Attachment: Conservation Easement Sample Language

Land acquired by the State of Alaska using federal grant monies comes with restrictions. For instance, the land must be used and maintained in accordance with the public law creating the federal grant, as well as other federal laws and regulations and the grant agreement. Most federal grants require that if the land is not so used and maintained, the State may be responsible for reimbursing the federal government for the grant monies. The State is willing to assume this responsibility when taking fee title to land. However, when the State is acquiring a conservation easement using federal grants, the State will REQUIRE that the following paragraphs be part of the conveyance documents:

Rights of the State

Subject to the terms and conditions of this Conservation Easement, the State shall be entitled to enforce the terms of the following restrictive covenants against the Grantor as fee simple owner of the Property:

- a. To prohibit or enjoin any activity on the Property that is inconsistent with Public Law _____, ___ C.F.R. §____, and other applicable federal laws and regulations and the Grant Agreement.
- b. To enter the Property at reasonable times to monitor the Grantor's compliance with and otherwise enforce the terms of the Easement. The State shall give the Grantor at least seven (7) days prior written notice of such entry and will not unreasonably interfere with the Grantor's use and quiet enjoyment of the Property.
- c. To require, enforce, or undertake restoration of the areas or features of the Property which may be damaged by any activity or use that is inconsistent with Public Law _____, ___ C.F.R. §____, and other applicable federal laws and regulations and the Grant Agreement.

Costs and Liabilities

- a. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property.
- b. The State shall have no liability or other obligation for costs, liabilities, taxes, or insurance of any kind related to the Property as a result of this Easement.
- c. The Grantor shall hold harmless, indemnify, and defend the State and its employees, officers, trustees, governors, agents, and contractors (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney fees, arising from or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter relating to or occurring on or about the Property, regardless of cause, except to the extent due to the negligence of the Indemnified Parties; or (2) breach of the Grantor's obligations specified in this Easement.

Disposition of the Property

The Grantor may not dispose of the Property, or encumber its title or other interest in the Property without prior written permission from:

Commissioner
Department of Natural Resources
State of Alaska
550 West 7th Avenue, Suite 1400
Anchorage, AK 99501

And federal agency administering the grant or their duly authorized designees.

Grantor shall not dispose of the property or otherwise encumber its interest in the property without notice to and written consent from the State of Alaska. Grantor may be required to reimburse the State of Alaska for all or a portion of the grant

proceeds provided by the State of Alaska for this Conservation Easement if Grantor disposes of the property or otherwise encumbers its interest in the property without the written consent of the State of Alaska.

Use and Maintenance of the Property

The Property shall be used or maintained in a manner consistent with Public Law _____, ___ C.F.R. §__, and other applicable federal laws and regulations and the Grant Agreement. In the event the Property is used for reasons inconsistent with Public Law _____, ___ C.F.R. §__, and other applicable federal laws and regulations and the Grant Agreement, the Grantor shall, at the request of the State, cease the violative activity and correct any adverse effects caused by the inconsistent activity using non-federal monies. In the event the Grantor refuses to correct adverse effects and the State is required by the federal government to correct said effects, the Grantor shall reimburse the State its costs for correcting the adverse effects using non-federal monies.