

CONSERVATION EASEMENTS: ENSURING FUTURE PROTECTION OF VALUABLE LAND AREAS

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Lack of protection of small valuable wetland areas from urban expansion projects can negatively affect environmental quality for miles throughout a watershed, and can lead to a net loss of wetlands. Research performed along the southeastern Atlantic coastal plain has shown a marked decrease in small wetland areas. This trend became evident in 1984 when it was reported that 84% of wetland losses for the entire nation occurred in the southeastern United States. Preservation of all wetlands, no matter how small, is important for maintaining the biodiversity of plant and animal life located within these areas. Although laws have been created to promote wetland survival, destruction of wetland areas still occurs. The purpose of this project was to determine various conservation methods that can offer viable solutions to preserving remaining wetland areas within the Dog River Watershed in Mobile, Alabama. Through extensive library and internet research, it was discovered that conservation easements can guarantee the protection of wetland areas in perpetuity. In order to ensure that this method will be fully sustainable, it was necessary to conduct additional research to determine the following factors: process/costs of easement acquisition, potential easement holders and their responsibilities, and possible funding mechanisms for conservation easement acquisition and monitoring. It is expected that, by educating the public on the process and benefits of conservation easements, many valuable plots of land crucial to watershed areas can be acquired for the purpose of protecting, and in some cases improving, existing wetlands nationwide.

Keyword: conservation easements, wetlands, biodiversity.

Introduction

Lack of protection of small valuable wetland areas from urban expansion projects can negatively affect environmental quality for miles throughout a watershed, and can lead to a net loss of wetlands. Research performed along the southeastern Atlantic coastal plain has shown a marked decrease in small wetland areas (Semlitsch and Bodie 1998). This trend became evident in 1984 when it was reported that 84% of wetland losses for the entire nation occurred in the southeastern United States (Hefner 1984). It is also predicted that, by the year 2020, millions of acres of valuable land will have been

affected by urban development projects (Draper 2004). Preservation of all wetlands, no matter how small, is important for maintaining the biodiversity of plant and animal life located within these areas (Semlitsch and Bodie 1998). The importance of wetland protection has been noted by the president of the United States and laws have been enacted to ensure that no net loss of wetland occurs within the country (Turner, Redmond and Zedler 2001)

Although laws have been created to promote wetland survival, destruction of wetland areas still occurs. Mitigation is one method that has been employed to decrease large wetland destruction, but research indicates that as few as one out of eight mitigation sites instituted all compensation requirements (Turner, Redmond and Zedler 2001). Also, due to costs associated with mitigation, this method is typically utilized when dealing with large parcels of land (Moxey 2010). Because of this, small wetland areas are especially vulnerable to lack of protection (Semlitsch and Bodie 1998). Evidence of this is seen in the Dog River

Watershed in Mobile, Alabama (Fig.1). Construction companies have destroyed valuable wetlands and altered the overall quality of the watershed by allowing sediments to enter these areas. Roadways, built by local residents, through wetland

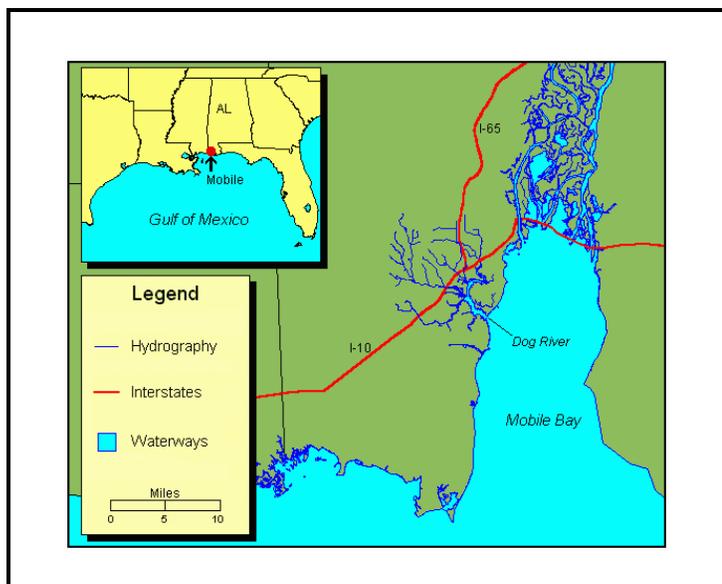


Figure 1 Map of Dog River Watershed

areas, can affect the watershed by causing a substantial decrease in biodiversity (Findlay and Bourdages 2000). Research indicates that 95% of endangered species of plants and animals are on privately held lands (Merenlender, et al. 2004). The community must be made aware of ways they can protect the environment and themselves from future development projects that could destroy land they have worked hard to acquire.

Research Question

This project has addressed the questions; “What are conservation easements and how can they provide valuable benefits to both DRCR and land owners?”, “What is an easement holder and what are their responsibilities?”, and “What are potential sources of funding for conservation easements and the groups who take responsibility for them?”

The answers to these questions have identified ways in which land valuable to the Dog River Watershed can be preserved for the purpose of ensuring the environmental quality of the entire watershed for future generations. This project has provided an avenue for the DRCR, local residents, and easement holders to work together as a unit to achieve the common goal of protecting the land and environment from further destruction. Successful implementation of the conservation method discussed in this project could serve as an example for other states or entities interested in protecting the future of valuable wetland/watershed areas.

Methods

I performed library research and searched the internet for peer reviewed journal articles pertaining to process and costs of conservation easement acquisition. Also, I met

with a potential easement holder and presented him with information pertaining to conservation easements, the responsibilities of the holder, and possible funding mechanisms to make the project a sustainable endeavor. In order to create an awareness pertaining to conservation easements among the residents of Dog River, I placed an article in the Dog River Clearwater Revival Newsletter. I also contacted a local landowner who indicated an interest in conservation easements and offered to assist him in collecting information on this conservation method. Below is a list of goals and objectives that served as a sequencing guideline for the performed research.

Goal #1- To empower residents with the knowledge of how conservation easements can protect valuable wetland areas.

Objective #1.1- To provide residents with information on how to protect their land through the use of conservation easements.

Objective #1.2- To assist residents in obtaining knowledge about the application process for conservation easements.

Objective #1.3- To make residents aware of the financial advantages of conservation easements.

Goal #2- To identify possible easement holders to work in tandem with DRCCR through the management of acquired conservation easements.

Objective #2.1- To prepare a packet of information outlining an easement holder's responsibilities.

Objective #2.2- To identify possible costs and funding methods that will enable this project to be sustainable.

There were two different clientele groups for this project. The first, and primary, clientele were the residents of the Dog River Watershed community. This clientele group was represented in the project objectives for Goal #1. The second clientele group was the easement holder. This clientele group was represented in the project objectives for Goal #2. Each of these groups was a critical component of this project, and each received important information pertaining to benefits provided by successful implementation of conservation easements.

To achieve Goal #1, I placed an article pertaining to conservation easements in the Dog River Clearwater Revival newsletter. This allowed me to directly target residents who can have the greatest influence on land conservation within the Dog River Watershed. The article informed residents about the benefits of conservation easements and the process that needs to be followed should they choose to pursue an easement.

Goal #2 was accomplished by presenting potential easement holders with a packet of information which detailed the easement process, the approximate cost associated with easement acquisition, and the responsibilities of an easement holder. To enhance the likelihood of success for this project, I identified sources of funding to help offset, or alleviate, the cost of easement acquisition and monitoring. This will offer a means by which this project can be sustainable for many years to come.

Results and Discussion

Research revealed vast amounts of information pertaining to conservation easements, easement holders, and possible funding mechanisms for conservation projects. The results of this research, obtained from peer reviewed journal articles, law journals, reports, personal interviews, and internet websites, was compiled and presented in a packet of information that details the following: conservation easements and the acquisition process, easement holders and their responsibilities, and possible funding mechanisms to offset both the cost of easement acquisition and the easement holders monitoring expenses. For organizational purposes, this information was divided into two separate sections, Goal #1 (resident) and Goal #2 (easement holder), and further subdivided based upon goal objectives.

Goal #1

Conservation easements are agreements between a landowner and an easement holder, usually a government agency, land trust, or non-profit organization (Brewer 2003). The agreement contains conditions agreed upon by both the landowner and the holder, pertaining to use of land (Alabama Land Trust, Georgia Land Trust n.d.). Easements are generally initiated with conservation in mind, whether it is protecting wetland areas, water quality or areas that are important for wildlife migration (The Nature Conservancy 2009). While this type of easement allows the resident to retain ownership of the land, he/she must forever abide by the conditions set forth within the agreement (Glickfeld, et al. 1995). In the event that land with a conservation easement is sold, or endowed to other family members, the easement, along with its terms and conditions, transfers to the new owner (Brewer 2003).

Process

Once it is determined that land is eligible for conservation, the easement process can begin. The landowner must first contact a potential easement holder and arrange a site visit. During the site visit, the potential easement holder will check for environmental hazards or other problems that could influence the easement process (Brewer 2003). Each party will then discuss what qualifications or conditions they want listed in the easement. At this point, it is highly recommended that the landowner obtain legal counsel to review all documentation that is generated during the easement process (Palmer Land Trust 2009).

After all parties have agreed upon proposed conditions, a baseline inventory, which is a written report detailing the property's present condition, will be performed. The baseline inventory is necessary if residents plan on claiming a federal tax deduction for the easement donation (Brewer 2003). Maps and numerous photographs, especially helpful if taken in tandem with GPS coordinates, are also necessary to document condition and conservation quality of the land (Brewer 2003). In some cases, a Mineral Geology Report may be needed before the process can continue (Palmer Land Trust 2009). Most importantly, it must be established that the land has clear title, if not, steps must be taken to verify that the lending institution holding the title is willing to subordinate the mortgage (Brewer 2003).

The next step is obtaining a qualified appraisal. After receiving the appraisal, the easement holder has 60 days in which to receive the donated lands (Palmer Land Trust 2009). During this time, the landowner and the easement holder will finalize all aspects

of the easement agreement. Depending on the entity chosen to be the holder of the easement, the landowner may be required to contribute monetarily to a stewardship fund, which will provide the necessary funds for monitoring the easement in perpetuity (Palmer Land Trust 2009). Most residents view this as a small price to pay for the many benefits they will receive from acquiring a conservation easement (Brewer 2003).

Benefits

There are various tax benefits available to landowners who donate their property through easement. However, there are certain conditions that must be met for the easement to be deemed eligible to receive these benefits. The owner must prove that the land has a conservation purpose, and that it will be monitored in perpetuity by a qualified non-profit organization (Alabama Land Trust, Georgia Land Trust n.d.).

Possible benefits include reduction in property taxes and federal/state income tax deductions. Because part of the land has been donated through easement, residents may be able to receive a reduction in property tax due to the diminished value of the land (Young 2008). New tax laws may allow residents to deduct most, if not all, of the value of the land donation from their taxes over a span of 15 years (Schwing 2008). This is a significant increase from the perviously allowed six years (The Nature Conservancy 2009). The amount of the deduction allowed per year depends on the individuals' adjusted gross income (AGI). Under normal circumstances, the landowner can deduct 50% of his/her AGI, previously only 30%, from their taxes due to easement donation (Schwing 2008). However, if the majority of a landowners' income is generated through

farming or ranching, the landowner may be able to deduct up to 100% of his/her AGI, per year, over a 15 year period (Schwing 2008).

Benefits could also extend to future generations. Conservation easements could help reduce estate taxes by as much as \$500,000 on land bequeathed to heirs (Brown 1998). In some instances, the estate tax may be eliminated altogether, allowing families to keep land that might have been sold due to the heirs' inability to pay high estate taxes (Schwing 2008). Future generations will also be assured that their families' goal of conservation will extend far into the future due to the actions of the easement holder (Brewer 2003).

Goal #2

Potential easement holders include governmental organizations, land trusts, and non-profit organizations whose goal is conservation. In order to ensure protection of the easement, these holders, or community stewardship organizations (CSO's), are required to fulfill certain responsibilities. Their responsibilities include; yearly site visits, and taking both ground level and aerial photographs of the site (Brewer 2003). The holder will make regular visits to the site, and generate a written report describing the condition of the property, especially noting any changes that have occurred since the last visit (Bay Area Open Space Council 1999). In general, approximately ten hours per year are spent monitoring an easement (Bay Area Open Space Council 1999). While monitoring may be performed by volunteers, it is not suggested that the entire monitoring staff consist of volunteers (Bay Area Open Space Council 1999). However, it is recommended that a primary landowner contact should be established for each piece of property in order to

ensure positive relationships between the easement holder and both current and future landowners (Brewer 2003).

Meticulous record keeping is essential to good stewardship. A central office will house all easement records along with up to date lists containing the name of the current landowner of each property they manage (Minnesota Department of Natural Resources 2008). Each easement file will contain baseline documentation and all monitoring reports for a particular piece of property (Minnesota Department of Natural Resources 2008). In the event a landowner violates one of the conditions of the easement, the easement holder will have the evidence needed to pursue legal action if necessary (Brewer 2003). Although easements are considered to be perpetual, holders may encounter a situation in which the easement needs to be amended due to changing conditions (Merenlender, et al. 2004). Predetermined policies will dictate the appropriate steps necessary to amend an easement (Merenlender, et al. 2004).

Whether or not funding for easement management is provided by the landowner, it is necessary for the easement holder to make sure funds are available to monitor the site in perpetuity (Brewer 2003). It has been suggested that using the formula $2(1 \text{ year monitoring cost}/.04)$ allows the holder to establish a cost of monitoring that will be adequate, even if tax rates in later years fluctuate (Brewer 2003). For example, if monitoring of a parcel is expected to cost \$500, then \$25,000 is the amount needed to ensure perpetual stewardship of the easement. In addition, easement holders must also establish an easement defense fund in order to cover expenses incurred during the legal defense of easement agreements (Brewer 2003).

Costs/Funding

Though conservation easements offer a multitude of benefits, they do not come without a price. The cost of acquiring conservation easements varies, but generally ranges from \$30,000-\$45,000, depending on the entity chosen to be the easement holder (Palmer Land Trust 2009). However, the majority of the cost of a conservation easement comes from the annual monitoring of the easement by the easement holder (Brewer 2003).

In order to offset, or alleviate, the cost of easement acquisition and monitoring, various funding mechanisms can be utilized. These mechanisms include: grants, conservation funds, and revenue-generating deed restrictions. Grants, which could require a 50/50 matching contribution to the amount borrowed, can be from either federal or state sources (Alabama Department of Economic and Community Affairs n.d.). This makes the presence of a conservation fund within a city especially important. Because a conservation fund has money readily available, eligible parties can take immediate advantage of grants that require a 50/50 matching contribution (Charlotte Land Trust 2010).

Another method of funding, which can ensure the success of conservation easements, is revenue generating deed restrictions. Revenue generating deed restrictions would require future homeowners and businesses to pay monthly assessments or fees to a community stewardship organization within the area (Florida Planning Toolbox n.d.). This method of financing would ensure a perpetual cash flow that can be used for monitoring conservation easements (Florida Planning Toolbox n.d.)

An alternative to imposing fees and assessments upon local residents, is establishing a Wetland Restoration Fund. A Wetland Restoration Fund would enable finances to be available for restoration, maintenance, long-term monitoring, acquisition, enhancement, or creation of wetland or riparian areas (CBWN 2001). The state of North Carolina established such a fund with \$6 million they acquired from the Clean Water Act Trust Fund. Deposits into the fund are made by developers who wish to make monetary donations, rather than pursue compensatory mitigation (CBWN 2001).

Despite the cost generated through easement acquisition and monitoring, any organization, even those with small budgets, can be successful if proper financial planning occurs (Naidoo, et al. 2008). Grants, such as the Kodak American Greenways Program, are available to assist groups, especially small grassroots organizations, in webpage development, signage along trails, and development of recreational opportunities for local residents (The Conservation Fund 2007-2009). This particular program has donated over \$800,000 for the creation and promotion of greenways (The Conservation Fund 2007-2009).

Conclusions

Conservation easements offer a way for homeowners to protect their land against future development that could negatively impact the health of watershed and other wetland areas. Easements provide benefits to both the residents and DRCR. Residents could be eligible for valuable tax deductions, while also protecting future generations from having to pay high inheritance taxes on land bequeathed to them. In turn, DRCR

achieves its goal of protecting valuable wetland areas that have an influence on the overall quality of the Dog River Watershed.

Dog River Clearwater Revival can be instrumental in passing on knowledge, pertaining to conservation easements, to residents throughout the watershed. Because of the perpetual nature of most easements, protection of these lands will be monitored by the easement holder, whether it is the DRCCR group or a group that works in tandem with DRCCR, to ensure landowner compliance to the terms set forth within the easement agreement. This coincides with DRCCR's vision of watershed protection, not only now, but also for future generations.

The funding information discovered during this research project identified various ways in which capital can be obtained for the purpose of acquiring and monitoring conservation easements. Successful utilization of these funding mechanisms can provide organizations, even those with very limited budgets, the opportunity to grow and advance their conservation efforts. By creating a strong, financially stable organization, the DRCCR will be able to make tremendous strides in protecting the overall quality of the watershed. This strong leadership, paired with involvement from local residents and easement holders, will foster greater community involvement, and can allow this project to serve as a guide for promoting future conservation efforts in other territories.

Through the process of research, I was unable to find maps documenting conservation easements within the Mobile area. It would be very interesting to find out how much, if any, land within the area is protected by conservation easements. Data obtained from this research could be presented in a map which depicts land preserved for

conservation purposes within the Mobile area. Further research concerning easements and eminent domain could also be performed in order to determine how enduring conservation easements are when challenged by political agendas.

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