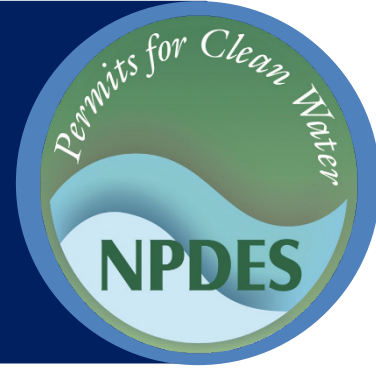




# Stormwater Best Management Practice

## Conservation Easements



**Minimum Measure:** Post Construction Stormwater Management in New Development and Redevelopment

**Subcategory:** Innovative Practices for Site Plans

### Description

Conservation easements are voluntary agreements that allow individuals or groups to limit the type or amount of development on their property to achieve certain conservation purposes. A conservation easement can cover all or just part of a property and can be either permanent or temporary. Easements typically focus on specific land uses, such as agriculture, forest, historic properties and open space.

Easements can relieve property owners of the burden of managing these areas. They shift responsibility to a private organization (land trust) or government agency that may be in a better position to take responsibility for management and compliance issues associated with the property. In some cases, property owners might realize tax benefits by placing conservation easements on some or all of their property.

Conservation easements may indirectly help protect water quality. Land that property owners set aside in a permanent conservation easement has a prescribed set of uses or activities that generally restrict future development. Often, this limits impervious surface development and preserves an area's natural hydrology.

Owners can evaluate the location of their land held in a conservation easement to determine its relative ability to provide water quality benefits. Property along stream corridors and shorelines can act as a vegetated buffer that filters out pollutants from stormwater discharge. The ability of a conservation easement to function as a stream buffer depends on the width of the easement and type and condition of the vegetation within the easement (see the "Riparian Forested Buffer" fact sheet).

### Applicability

Conservation easements typically aim to preserve agricultural lands and natural areas that development threatens. For rapidly urbanizing areas, conservation easements may provide a way to preserve open space before land prices make it impractical for government



Conservation easements allow property owners to conserve natural areas that may otherwise be developed.

agencies with limited budgets to buy land with important cultural and natural features. Urban areas typically have fewer conservation easements than other areas due to the lack of available open space for purchase and the high cost of undeveloped land. In addition, private land trusts may limit the size and type of land that they are willing to manage as conservation easements.

### Implementation

Conservation easements ensure that land remains in its current state long after the original owners no longer control it. By agreeing to restrict the development rights for a parcel of land, landowners guarantee that it will remain in a prescribed state for a fixed period of time (e.g., 30 years, permanent) while receiving tax benefits. Often, state agencies and private land trusts have specific qualifications for a property before they enter into an easement agreement with landowners. Table 1 contains examples of criteria that private land trusts use to determine if a property is worth managing in a conservation easement.

**Table 1. Typical criteria that land trusts use to determine feasibility of entering into conservation easement agreements.**

Criteria	Details
Natural resource value	Does the property provide a critical habitat or important environmental aspects worth preserving?
Uniqueness of the property	Does the property have unique traits worth preserving?
Size of land	Is the land large enough to have a natural resource or conservation value?
Financial considerations	Are funds available to meet all financial obligations?
Perpetuity	Is the conservation agreement a perpetual one?
Land trust’s mission	Does the property align with the land trust’s mission and the organization’s specific criteria?

Conservation easements are applicable in all parts of the country; many private groups, both national and local, exist to preserve natural lands and manage conservation easements. States also use conservation easements and land purchase programs to protect significant environmental features and open space. The U.S. [Land and Water Conservation Fund](#), a federally funded program, provides 50/50 matching grants to state and local governments to acquire land for public outdoor recreational use.

Maryland has received national recognition for its programs that provide funding for state and local parks and conservation areas. The state is one of the first to use real estate transfer taxes to pay for land conservation programs. Funding for several programs comes from this tax of one-half of one percent (\$5 per thousand) of the purchase price of a home or land, or other state funding programs (MDNR, 2019). To date, Maryland has preserved more than 1.75 million acres of land, tracked through its interactive [Protected Lands Dashboard](#). Maryland’s conservation programs include:

- **Program Open Space.** This program, which has both a state and a local version, has acquired nearly 400,000 acres of open space for state parks, local parks and natural resource areas. Every five years, state, federal and local organizations develop a [Land Preservation and Recreation Plan](#) that outlines acquisition and development goals in order to maintain eligibility to receive [Land and Water Conservation Fund](#) grants and guide the long term vision of Program Open Space.
- **Maryland Environmental Trust.** This state-funded agency helps local citizen groups form and operate local land trusts. It offers the land trusts technical assistance, training, grants for land protection projects and administrative expenses, and participation in the Maryland Land Trust Alliance.
- **Rural Legacy Program.** This smart growth initiative redirects existing state funds into a focused, dedicated land preservation program that specifically aims to limit the adverse effects of sprawl on agricultural lands and natural resources. The program purchases conservation easements for large contiguous tracts of agricultural, forest and natural areas subject to development pressure, and it purchases fee interests in open space where public access and use are necessary.

Other examples where communities have strategically used conservation easements for water quality purposes can be found on EPA’s [Green Infrastructure Web site](#).

The holder of a conservation easement—whether a government agency or a private land trust—has certain management responsibilities. Some examples:

- Ensure that the easement’s language is clear and enforceable.
- Develop maps, descriptions and baseline documentation of the property’s characteristics.
- Regularly monitor the use of the land.
- Provide information on the easement to new or prospective property owners.
- Establish a review and approval process for land activities that the easement stipulates.
- Enforce the easement’s restrictions through the legal system, if necessary.
- Keep property/easement-related records.

## Limitations

Conservation easements have limits as a stormwater management tool. For example, there are significant impediments to using these measures in heavily urbanized areas, where the size, quality and cost of land limits the viability and feasibility of such easements. Depending on the specific type of easement, another limiting factor can be its duration—if the easement does not hold the land in perpetuity, long term water quality protection may not be possible. In addition, easements may not be able to address concentrated stormwater impacts from developed areas, because property owners use them more frequently outside of developed areas.

## Maintenance Considerations

The responsibility for maintenance of property held in a conservation easement depends on the terms of the individual agreement. While many organizations assume the responsibility for managing the easement property and for meeting the terms of the easement, some land trusts leave maintenance responsibilities to the landowner.

## Effectiveness

A conservation area's effectiveness in protecting water quality depends on how much land the property owner conserves, conservation techniques, the land's location in relation to a waterbody, and the specific nature of the easement. Generally, maximum effectiveness occurs when those responsible for the site keep it relatively undisturbed and ensure the retention of a site's natural hydrology. Any alteration of natural conditions, such as partial development or limited agricultural use by landowners, may reduce water quality benefits. The downstream effects of these management actions—whether positive or negative—tend to be enhanced the closer the easement property is to the downstream waterbody.

These benefits are difficult to measure directly, as the purpose of conservation easements is to prevent environmental impacts, not to remediate existing impacts. Still, studies have explored the benefit of conserving natural lands (or the impact of developing natural lands), showing direct links between the level of development and the health of benthic organisms in

local streams, which is an indicator of water quality (May and Horner, 2002; Schueler et al., 2009; Walsh, 2004). Over time, these observations have caused stormwater practitioners to revise the broad goals of stormwater management, adding a focus on restoration or conservation of natural hydrologic processes to the traditional focus on flood control and pollution mitigation (Clark et al., 2010; Walsh et al., 2016).

## Cost Considerations

The costs associated with conservation easements include administrative costs and land management costs. Generally, tax or fee programs fund these costs, though specific arrangements depend on local circumstances. For example, Virginia Beach's Open Space Special Revenue Fund receives partial funding through a \$0.44 dedication of restaurant meal taxes (City of Virginia Beach, 2018), while organizations like [Alachua Conservation Trust](#) rely on donations and various grants to support the conservation of more than 53,000 acres of Florida land.

## Additional Resources

Additional resources detailing design, implementation and funding of conservation easement programs include:

- [The Land Trust Alliance](#)—a national leader in policy, standards, education and training.
- [The Conservation Easement Handbook](#)—a resource for land conservation professionals developing conservation easement programs, by the Land Trust Alliance and the Trust for Public Land.
- [Better Site Design: A Handbook for Changing Development Rules in Your Community \(Part 1\)](#)—a handbook by the Center for Watershed Protection.
- [The Pennsylvania Land Trust Association's Conservation Tools Web page](#)—a resource for model easements, tax rules and helpful articles from conservation professionals.
- [Managing Growth and Development in Virginia: A Review of the Tools Available to Localities](#)—a report by the Virginia Chapter of the American Planning Association.

### Additional Information

Additional information on related practices and the Phase II MS4 program can be found at EPA's National Menu of Best Management Practices (BMPs) for Stormwater website

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### Disclaimer

*This fact sheet is intended to be used for informational purposes only. These examples and references are not intended to be comprehensive and do not preclude the use of other technically sound practices. State or local requirements may apply.*