

Bells Bend – Scottsboro Community Education Meeting 2

Conservation Easements

Conservation Easements¹

A conservation easement is a voluntary contract between a landowner and a land trust, government agency, or another qualified organization that places development restrictions on a property.

In the conservation easement, the owner places permanent restrictions on the future uses of some or all of his or her property to protect scenic, environmental or agricultural resources. Each conservation easement is unique –

- to preserve the unique features of the land,
- to preserve, for the land owner, which development entitlements they may want in the future, and
- to meet the financial and tax planning needs of the land owner.

Conservation easements list what land uses will and will not be allowed on the land. They often place limits on the number of future home sites.

The land owner donates the conservation easement to the land trust, which enforces the terms of the easement in perpetuity. Essentially, the land owner *donates those development rights*, receiving tax benefits and ensuring that the land will remain undeveloped (to the degree specified in the agreement) for perpetuity.

The land owner still owns their property and retains all the rights they did not donate. They can use the land, sell it, leave it to heirs, but the restrictions stay with the land forever.

Tax Benefits

The donation of the conservation easement may entitle the donor to tax advantages because the development rights that are donated have financial value. To determine the value and appraisal is conducted. Generally, three types of tax benefits are available.

1. Federal Income and Capital Gains Tax Benefits - Congress recently passed new incentives: Under the IRS code, the value of the donation of a qualified conservation easement can be deducted at an amount up to 50 percent (up from 30%) of the donor's adjusted gross income in the year of the gift. If the easement's value exceeds 50 percent of the donor's income, the excess can be carried forward and deducted over all or part of the next 15 years (up from 5 years).
*Note: These new tax incentives are currently only for conservation easements donated in 2006 and 2007.
2. Property Tax Benefits: A conservation easement may reduce or stabilize property taxes, depending on current zoning and land use and current assessed value.
3. Estate Tax Benefits: The donation of a conservation easement, whether during the landowner's life or by bequest, can reduce the value of the land upon which estate taxes are calculated. This benefit can often mean the difference between heirs having to sell or develop the property to pay estate taxes, or being able to keep the property in the family. A conservation easement may be an effective way to pass land on to the next generation in its natural state."

¹ Information on conservation easements from the Land Trust for Tennessee – www.landtrusttn.org

Bells Bend – Scottsboro Community Education Meeting 2 **Transfer of Development Rights & Purchase of Development Rights**

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Transfer of Development Rights (TDR)

Any piece of property comes with a bundle of development rights, which is limited by factors such as zoning, land use restrictions, building code provisions, environmental laws and the market forces of supply and demand. TDR allows that bundle of development rights to be divided into pieces, and the pieces to be transferred (bought, sold or donated) from one site to another site. The development rights are shifted from the “sending site” to the “receiving site”.

TDR allows communities to decide which areas should have higher density and which should have lower density development. TDR is usually used to preserve green space, environmental treasures, agricultural lands or historic sites.

TDR can relieve development pressure from areas intended to be low-intensity, while allowing owners of properties in lower density areas to realize the value of the property’s development potential.

TDR in Tennessee

In 2001, Tennessee lawmakers enacted law to guide the use of TDR in Tennessee (Tennessee Code Annotated 13-7-101 and 13-7-201). This “enabling legislation” allows counties and municipalities to create their own TDR programs.

Tennessee’s law has the following features:

- TDR occurs ONLY with willing buyer and willing seller (“Such rights shall only be transferred by contract and not by operation of law.”),
- Price is negotiated in free marketplace,
- A landowner may *donate* development rights to government or a non profit conservation group and
- The TDR is noted on the plat(s) or other legal instruments and recorded at the Register of Deeds.

TDR in Nashville/Davidson County

In 2007, Metro Council enacted law creating a system of TDR designed to protect historic sites in Downtown Nashville. The sending sites are historic zoning districts in Downtown (2nd Ave. S. and Lower Broadway). The receiving sites include Downtown Core, SoBro and Lafayette neighborhoods; all of the Gulch, North Gulch and Sulphur Dell. To date, no TDR system has been created in Nashville/Davidson County for the preservation of greenspace, environmental treasures or rural areas. A system could be created through legislation passed at Metro Council.

Challenges of TDR

- Identifying receiving sites can be contentious,
- Identifying the appropriate mix of receiving sites to sending sites to create a market for development rights (it is generally assumed the ratio needs to be 2:1 or up to 2.5:1),
- Determining how much additional development rights can be applied to a receiving site – to ensure that any development conforms with the Community Plan (don’t over develop), but also provides enough incentive for receiving sites to purchase development rights.

Purchase of Development Rights

A public program to pay landowners the fair market value of their development rights in exchange for a permanent conservation easement that restricts development of the property. PDR programs are strictly voluntary and are usually funded by the sale of bonds or property tax revenues.

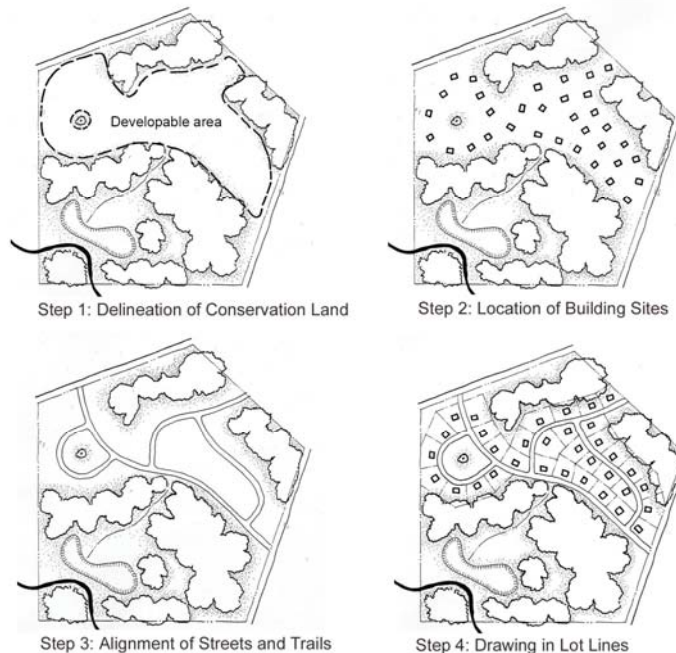
Definitions

Metro Nashville Definition - Conservation subdivisions are a new subdivision option that allows for single-family residential development while preserving at least 50 percent of the land including environmentally, historically and culturally sensitive areas. The purpose is to:

- Provide for the preservation of open space.
- Permit flexibility of subdivision lay out design to promote environmentally sensitive and efficient use of the land.
- Preserve in perpetuity:
 - Unique or sensitive natural resources such as groundwater, floodplains and floodways, wetlands, streams, steep slopes, woodlands and wildlife corridors and habitat;
 - Scenic views; and
 - Historic and archaeological sites.
- Permit grouping of houses and structures on less environmentally sensitive soils that will reduce the amount of infrastructure, including paved surfaces and utility easements, necessary for residential development.
- Minimize land disturbance and removal of vegetation during construction resulting in reduced erosion and sedimentation.
- Promote interconnected greenways and wildlife and other natural corridors through the community.

The primary difference between conservation subdivisions and conventional ones involves the location of the homes on one part of the parcel, i.e., the homes are clustered. Other changes involve management and ownership of the land that has been left for preservation.

Four-Step Design Process for Conservation Subdivisions



Examples of Conservation Subdivisions

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Cobb Hill

Hartland, VT

- Site size: 270 acres of forest and farmland
- Co-housing community includes a working organic farm, environmentally built houses, the Sustainability Institute and numerous farm-related enterprises (Cobb Hill Cheese, maple syrup, bees, sheep, etc.).
- Members own their homes plus a share in the commonly owned land, barns, and common house.
- Number of Units: Mix of single family homes, duplexes and apartments; 23 households/40 adults, 20 children
- Agricultural Features: 10 agricultural enterprises in operation, 2006 harvest was:
 - 7897 eggs
 - 58 lbs chicken sausage
 - 220 lbs of honey
 - 970 lbs of chicken meat
 - 800 ten lb. wheels Ascutney Mountain alpine cheese
 - 400 ten lb. wheels Four Corners Caerphilly
 - 2833 bales of high quality hay
 - 635 lbs of packaged lamb meat
 - 104,063 lbs fluid milk for cheese
 - 1500 lbs of fluid milk for customers
 - 800 lbs beef
 - 9 replacement dairy heifers
 - 100,000 lbs composted manure
 - 131 gallons of maple syrup
 - Several tons of 40 types of vegetables
 - Flowers/ herbs

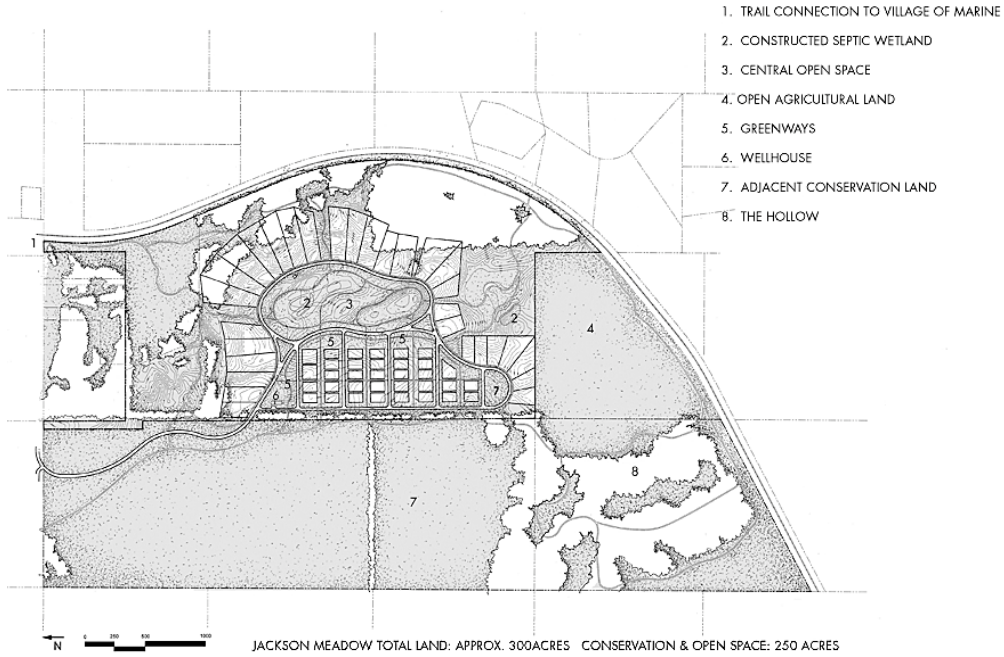


Jackson Meadow

Marine on St. Croix, MN

- Northeast of Twin Cities
- Clustered homes use 30 percent of land.
- Front yards converge on walking paths; narrow, slow roads are functional yet fit into context.
- Site size: 315 acres total; 145 within development boundaries
- Number of Units: 64 single family homes
- Lot sizes: .3 – 1.75 acres
- Open Space: 275 acres total (87%): 105 owned by homeowner's association; 170 by adjacent landowners
- Waste Treatment: Two constructed wetland systems

- Water: Central well system
- Trails: Five miles of public trails with connections to city and state park
- Natural Features: 70+ acres hardwood forest; 25+ acres restored prairie





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