

# **Purchase of Development Rights (PDR) Program Guide to Conservation Easements: Summary of the Legal Document**

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This guide summarizes the standard legal document used by the Town of Dunn for conservation easements which are donated or sold to the town. A conservation easement is a legal document between a landowner and a land trust (a private, nonprofit conservation organization) or government agency that permanently limits development of a property in order to protect its conservation or agricultural values. Easements can be designed to meet the individual financial and personal needs of each landowner. Once an easement is in place, future landowners are subject to its conditions.

The following is a summary of the sections and provisions typically found in the town's conservation easements. Please keep in mind that not all easements will follow the exact same format and that each easement will be tailored to meet the unique needs of each landowner and his or her family.

## **Introduction**

This section serves several purposes. First of all, it identifies the "grantor", (the landowner), the "grantees" (the Town) and a third party, usually a local, non-profit conservation organization, who will serve as a "co-holder", of the easement ("grant") along with the town.

The introduction then makes reference to an "Exhibit A" which describes in legal terms and identifies on a map the "protected property" conserved by the easement. In addition, the introduction also outlines some of the town's goals in protecting the property and describes the legal authority of the town to acquire conservation easements.

The introduction also makes a reference to a "Baseline Data" report. This report, which consists of maps, photographs and other relevant documents, serves as a record of the condition of the property at the time of purchase of the conservation easement. The town, landowner and co-holder of the easement must agree that this report is an accurate representation of the current condition of the property.

Finally, the introduction specifies the amount of money agreed to by the town, easement co-holder, and landowner for the conservation easement.

## **1. Purpose**

This section states that it is the general purpose of the easement to conserve productive agricultural land in order to facilitate active and economically viable farm operations now and in the future. It is also the purpose of the easement to preserve open space and the rural character and quality of life of the town for current and future generations. Finally, the Purpose Section outlines how and why protection of the particular property in question contributes to those goals and is tailored to the unique attributes of each farm.

## **2. Prohibited Uses**

The Prohibited Uses Section of each easement identifies limitations on the landowner's use of the conserved property. In general, this section first states that the property shall be used for agricultural, forestry, non-commercial recreation and open space purposes only. Most easements regulate the following:

- Development restrictions (residential, commercial, industrial, mining)
- Farm Plan requirements
- Impervious surface restrictions
- Clear cutting restrictions
- Wetland protection
- Landfill prohibition
- Sign and billboard restrictions
- Aircraft landing site, public boat marina, motorized vehicle race track prohibitions

It is important to note that exceptions to the above can be specified in each easement and that almost all activities necessary for maintaining a farm operation are allowed.

### **3. Reserved Rights**

This section basically confirms that it is the right of current and future owners to exercise all rights of ownership that are not specifically prohibited in the easement. The owners may also allow others, such as renters, to engage in all uses of the property that are not prohibited by the easement.

### **4. Rights of Grantees**

This section states that, in order to accomplish the purposes of the easement, the town and the easement co-holder are allowed to enter the protected property for purposes of monitoring compliance with the conditions of the easement. The grantees must provide the landowner with prior reasonable notice before entering the property and shall not interfere with the landowner's use and enjoyment of the property. The grantees also have the right to restore areas or features of the property that have been damaged by activities inconsistent with the easement at the landowner's expense (damages caused by acts beyond the landowner's control are exempted).

### **5. Grantees' Approval**

There may be instances, which will be specified in the easement, when the landowner must obtain approval from the town and easement co-holder for certain activities. For example, the landowner may need to secure approval from the town to post certain types of commercial signs. In these instances, approval shall be given in writing within 30 days of receipt of the landowner's written request. The request may only be denied when it is reasonably determined that the proposed action would be inconsistent with or a violation of the easement.

### **6. Notice Of Intention To Undertake Certain Permitted Actions**

This section requires landowners to notify the town and easement co-holder before doing certain permitted activities. This is done to give the town and easement co-holder an opportunity to talk with landowners before an action is taken and prevent misinterpretations of the easement.

### **7. Enforcement of Restrictions**

Under this section of the easement, either of the grantees (the town or the easement co-holder) may enforce the terms of the easement. If a violation of the easement occurs, either one of the grantees will attempt to contact the landowner personally to secure voluntary compliance. If after receiving written notice, the landowner fails to cure the violation within a given amount of time specified in the easement the grantees may enforce the easement in court. The town and easement co-holder will work with the landowner to voluntarily correct any violation of the conservation easement to avoid court enforcement. However, when voluntary efforts fail and a significant violation has occurred, it may be necessary to seek injunctive relief, an order requiring correction of the violation, or an award of monetary damages. The owner may be required to reimburse the grantees for their enforcement expenses.

## **8. Enforcement**

This section reiterates that the landowner may be responsible for covering the costs incurred by the town or easement co-holder in enforcing the terms of the easement. It also states that enforcement of the easement is at the discretion of the town and easement co-holder. Finally, this section clearly states that the landowner will not be responsible for any injuries or changes in the property that result from causes beyond his or her control, including for example, damage caused by fire or flood.

## **9. Access**

This section confirms that the easement does not provide public access to the protected property.

## **10. Costs and Liabilities**

This section clarifies that the landowner retains all responsibilities, costs and liabilities related to the ownership, operation and maintenance of the property. It also states that the landowner is responsible for all taxes assessed against the property. In addition, this section contains a "hold harmless" provision which protects the town and easement co-holder against liabilities associated with the property. For example, the town and easement co-holder cannot be held liable for injuries occurring on the property unless they are solely due to the negligence of the town or co-holder. This section also refers to "CERCLA" legislation and states that the town and easement co-holder are not liable for any hazardous waste that might be found on the property.

## **11. Assignment**

This section allows the town or easement co-holder to transfer their interest in the easement to another entity qualified to be a holder of a conservation easement under Wisconsin Statutes.

## **12. Subsequent Transfers**

Any future deed or lease conveying an interest in the property must refer to the conservation easement. The landowner must notify the town and easement co-holder 30 days prior to the date of a transfer of an interest in the property. This assures that new owners are aware of the conservation easement and provides the town with an opportunity to contact new owners to discuss the easement.

## **13. Estoppel Certificates**

This provision gives the landowner the right to request an estoppel certificate, which certifies that the landowner has complied with his or her obligations under the easement. If applicable, the certificate will also identify any outstanding violations of the easement.

## **14. Notices**

This section provides the addresses of the town, easement co-holder and landowner, and requires that any notice that any of the parties to the easement wish to communicate to each other shall be in writing.

## **15. Recordation**

This section specifies that the easement shall be recorded by the town in the Office of the Dane County Register of Deeds.

## **16. Extinguishment**

This section specifies that the easement can only be terminated or extinguished by court judicial proceedings.

## **17. Condemnation**

This section specifies that if the easement is taken the power of eminent domain, the Grantees shall be entitled to compensation.

### **18. Proceeds**

This section specifies that if should the easement is terminated and the land sold the town and co-holder would be entitled to a portion of the proceeds of the sale. Tax laws require this provision for donated easements. Note, the easement is designed to permanently run with the land. The extinguishment, condemnation and proceeds provisions are technicalities that will hopefully never be utilized.

### **19. Subsequent Liens On Property**

This sections states that the easement should not impair the landowner's ability to use the property as collateral for a loan.

### **20. General Provisions**

This section contains a number of general legal provisions. For example, the section states that nothing in the easement will result in the forfeiture of the landowner's title to the property. It also states that all future landowners will be subject to the terms of the easement. Finally, it authorizes the easement to be amended with the approval of all parties to the easement.