

# *Conservation Easements . . . Private Rights and Public Benefits*

---

## **Protecting Wildlife Habitat on Private Land**



Partners for Fish and Wildlife *Mountain-Prairie Region*

# Conservation Easements . . . Private Rights and Public Benefits

## Partners for Fish and Wildlife

Mountain-Prairie Region

March 1998



<i>Contents</i>	<u>page</u>
What is a Conservation Easement? . . . . .	3
Why Landowners enter into Conservation Easements . . . . .	3
Advantages Offered by Conservation Easements . . . . .	3
The U.S. Fish and Wildlife Service Role in Conservation Easements . . . . .	4
• Build trust with landowners through short-term habitat restoration agreements. . . . .	4
• Link Partners for Fish and Wildlife with community conservation foundations. . . . .	6
• Use a landscape approach to match landowners with Federal, State or private habitat programs. . . . .	8
Future Opportunities for Wildlife Habitat Easement Protection . . . . .	9
Easement Examples . . . . .	9
• Wetland Easements . . . . .	9
• Grassland Easements . . . . .	10
• Conservation Easements . . . . .	10
• Land Trust Conservation Easements . . . . .	11
• Wetlands Reserve Program Easements . . . . .	13
• Debt Reduction Easements . . . . .	14

## **What is a Conservation Easement?**

A conservation easement is a legal agreement voluntarily entered into by a property owner and a qualified conservation organization such as a land trust or government agency. The easement contains permanent restrictions on the use or development of land in order to protect its conservation values. These easement restrictions vary greatly for each agency or organization.

## **Why Landowners enter into Conservation Easements**

Landowner motivations to acquire conservation easements are diverse. Most landowners hold a deep appreciation for wildlife, and an easement protecting habitat displays heartfelt concern for wildlife's future. There may be a general concern that subdivision has gone too far. There may be additional interests to retain limited development rights for family use or for future income generation. Conservation easements can be structured to address any of these interests.

## **Advantages offered by Conservation Easements**

- |                          |   |
|--------------------------|---|
| <b>Private Ownership</b> | The property remains in private ownership and continues to contribute to the local tax base. The landowner may choose to live on the land, sell it, or pass it on to heirs.   |
| <b>Flexibility</b>       | Easements are flexible and can be written to meet a particular landowner's needs while protecting the property's wildlife resources.  |
| <b>Permanency</b>        | Most easements are permanent, remaining in force when the land changes hands. The easement holder ensures that the restrictions are followed.   |
| <b>Tax Reduction</b>     | There are significant tax advantages if easements are donated rather than sold.   |
| <b>-Charitable Taxes</b> | The donation of a conservation easement to a land trust is treated as a charitable gift of the development rights. The donation creates a charitable tax deduction, equal to the value of the conservation easement, on the landowner's Federal and State income tax returns. |
| <b>-Estate Taxes</b>     | Estate taxes are significantly lower, sometimes making the difference between heirs holding onto the family land or selling it to pay inheritance taxes.  |
| <b>-Property Taxes</b>   | Conservation easements will sometimes lower property taxes, a result of reduced valuation on property subject to the conservation easement.   |

## **The U.S. Fish and Wildlife Service Role in Conservation Easements**

A comprehensive strategy to reverse habitat fragmentation would include two important elements: a habitat restoration program such as the current Partners for Fish and Wildlife Program, and a habitat protection program consisting of voluntary conservation easements. The Fish and Wildlife Service could own and manage easements, as is now the case with wetland easements, grassland easements, and other conservation easements. Easements are cost effective conservation. The cost of purchasing and managing a conservation easement on private land is much less than purchasing the land.

In addition, the Service could impact conservation on easement land managed by others. For example, the Service could build on current successes by doing more to provide technical and financial assistance to local land trusts and community conservation foundations through Partners for Fish and Wildlife.

### **Build trust with landowners through short-term habitat restoration agreements.**

Partners for Fish and Wildlife is a positive, results-oriented approach to fish and wildlife conservation on private land. The goal is to restore habitat for wildlife species that are Federal trust responsibilities. The species list includes migratory birds; as well as some mammals, fish, reptiles, and amphibians whose numbers are declining. On-the-ground habitat restoration projects include: stream renovation for native fish; prairie wetland restoration for waterfowl and wading birds; and native prairie renovation for grassland songbirds and upland nesting ducks. The work is accomplished by an active alliance of willing landowners, non-government organizations, tribes, and State and Federal agencies. Landowner choice drives Partners for Fish and Wildlife habitat work. Nothing happens until a landowner says yes. Blending wildlife conservation with profitable agriculture is the formula for success.

Short-term agreements are important Partners for Fish and Wildlife tools. Agreements are written for a term, usually 10 to 30 years, agreed to by a landowner and a Partners for Fish and Wildlife biologist. These agreements, negotiated over the kitchen table, enable successful private land habitat restorations to take place. The landowners commit land for a project, as well as some habitat project. There are short-term agreements in place with over 9,000 landowners in the Mountain-Prairie Region. About 500 to 600 new agreements are added per year.

The trust building that develops with landowners through habitat restoration agreements sometimes leads to conservation easements. Some landowners will agree to an easement only after establishing and testing a relationship through a short-term agreement. About 20 percent of the wetlands restored through short-term agreements later become permanently protected at the landowner's request.



The conservation easement on this ranch (above) evolved from a short-term agreement to restore the foreground wetland.

The H2-O Ranch in the Blackfoot Valley, Montana (below), is another example of short-term agreements leading to permanent conservation easements.



In 1993, a cooperative effort between the U.S. Fish and Wildlife Service; Montana Fish, Wildlife and Parks; Ducks Unlimited; Trout Unlimited; National Fish and Wildlife Foundation; and the H2-O Ranch restored 35 drained oxbow wetlands and enhanced an additional 15 wetlands totaling over 200 acres. In 1996, the Montana Land Reliance secured a conservation easement on the H2-O Ranch perpetually protecting a 3,800-acre block.

## **Link Partners for Fish and Wildlife with community conservation foundations.**

There is a strong case for developing links between Partners for Fish and Wildlife, local community conservation foundations, and national private foundations. The expected results are:

- (1) the development and continued presence of strong local broad-based conservation groups that support habitat restoration and easements and
- (2) increased habitat restoration funding from national private foundations.

Recently a new tool has come into existence which may be of great benefit to Partners for Fish and Wildlife. Large national foundations have decided to stimulate the formation of community conservation foundations as a more effective way of addressing conservation and preservation issues than the traditionally narrow focus of national environmental groups. The formation of these community foundations offers Partners for Fish and Wildlife a golden opportunity to multiply the effectiveness of both its funding and staff. The most critical attributes that large foundations look for in community foundations are:

- (1) long-term continuity of operation and
- (2) ability to bring disparate elements of the community together to support conservation projects.

A Partners for Fish and Wildlife presence as a member of the local conservation “insiders group” can help strengthen both attributes in a local community. Partners for Fish and Wildlife relies on a variety of creative tools to accomplish its goal of restoring private land fish and wildlife habitat in ways that support traditional rural lifestyles and profitable agriculture. This goal can be easily collaborated with broader community conservation foundation goals. The assignment of Partners for Fish and Wildlife staff time and seed money for habitat restoration, within broader based community conservation goals, has been the formula for success in the Blackfoot Challenge and the Mission Valley Conservation Foundation, and before that in the Pioneer Heritage Conservation Trust, to name a few examples.

A community conservation foundation is more than a rod and gun club, or an Audubon chapter, or a land trust, or historic preservation group, but can represent the interests of all and overcome the shortcomings of each acting singly. The Pioneer Heritage Conservation Trust in Evansville, Minnesota, is a good example. They have successfully raised money to finance projects as diverse as wetland restoration, teacher scholarships for environmental education, preservation of historic buildings, waterfowl research, and improvements to the pioneer cemetery.

Looking to the future, it is important for Partners for Fish and Wildlife biologists to continue building information networks and personal contacts at the local level. The purpose is to accelerate habitat restorations and conservation easements by leveraging more money from large foundations. One of the many roles for community conservation foundations is to receive grants from large foundations. Partners for Fish and Wildlife biologists can fill the role of intermediary between landowners who want to restore habitat and the foundations that fund habitat restoration. The intermediary role is important to the life of the community conservation foundation. By their presence and dedication to habitat restoration, Partners for Fish and Wildlife biologists can help sustain the long-term commitment of local community-based conservation volunteers. Delivering the important “interim wins,” in the form of specific habitat projects enables volunteers to see incremental progress on the ground.

There is no single Partners for Fish and Wildlife strategy in working with community conservation foundations. Rather, strategies are developed to fit unique circumstances of particular communities, in particular places, and particular wildlife habitat needs. There are, however, some common threads in Partners for Fish and Wildlife participation:

- ▶ To sustain fish and wildlife populations through private land habitat restoration, using methods that are fully compatible with traditional rural lifestyles and profitable agriculture.
- ▶ To focus on the habitat needs of Federal trust fish and wildlife species, including declining species.
- ▶ To amplify resources through partnerships.

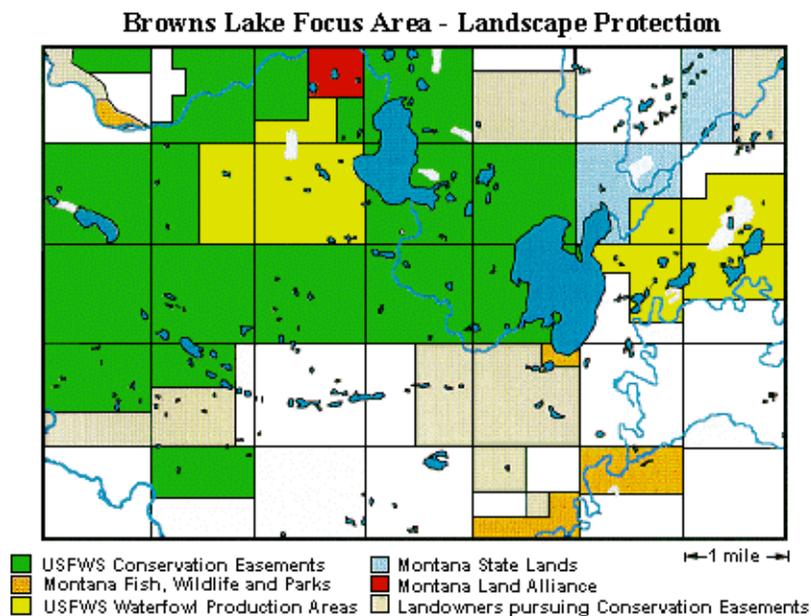
Here are some potential tasks for Partners for Fish and Wildlife biologists in linking with community conservation foundations:

- ▶ Represent the interests of wildlife habitat during the formation of new community conservation foundations.
- ▶ Publicly offer and deliver Partners for Fish and Wildlife commitment to the local foundation.
- ▶ Help write grant applications and present habitat fund-raising ideas to large foundations.
- ▶ Recommend estate planning options for Partners for Fish and Wildlife cooperators who may endow the community conservation foundation.
- ▶ Give regular feedback to the local group on habitat restoration success stories.
- ▶ Contract with a community conservation foundation to deliver habitat projects.

**Use a landscape approach to match landowners with Federal, State or private habitat programs.**

The landscape approach, or Integrated Habitat Restoration, enables Service employees to look for habitat solutions beyond land acquisition. A Service employee meets with a landowner and then works to apply the right program. The right program meets the landowner's interests and helps solve a habitat restoration/protection need.

If the Service employee can meet with organized groups of landowners, the habitat benefits are amplified. Service experience with landowner groups such as the Nebraska Sandhills Task Force, South Dakota's Sugarloaf Grazing Association, and Montana's Blackfoot Challenge are examples.



The figure above shows the landscape approach in a 35-square mile focus area within the Blackfoot River watershed. Different habitat options are used to appeal to different landowner's interests. With some landowners, the path towards permanent easement protection starts with a Partners for Fish and Wildlife habitat restoration agreement.

## Future Opportunities for Wildlife Habitat Easement Protection

There are good opportunities ahead to restore habitat on land protected by conservation easements. On which easement program should staff time be invested to get the best return for Federal trust species habitat? Fish and Wildlife Service wetland and grassland easements are proven easements but are limited to the Prairie Pothole States. The newer Fish and Wildlife Service conservation easement has wider application, as do The Nature Conservancy or Rocky Mountain Elk Foundation easements. Local land trusts are most active in places with the highest human demand for scenic living, usually within sight of mountains. U.S. Department of Agriculture easements can be used widely across the rural landscape.

The answer to the question on future opportunities is to be flexible. Biologists should know about all easement opportunities and be prepared to provide the best “kitchen table” information to landowners, and then be prepared to follow through with the right deal including habitat restoration and the appropriate easement.

### Easement Examples

#### Wetland Easements

*U.S. Fish and Wildlife Service*



An easement wetland covered with snow geese.

In the late 1950's, concern over rampant U.S. Department of Agriculture subsidized wetland drainage catalyzed the conservation community. One result was the Small Wetland Acquisition Program which provided an alternative to drainage. Starting in 1961, Duck Stamp funds were used to purchase easements and fee title to wetlands in the Prairie Pothole Region.

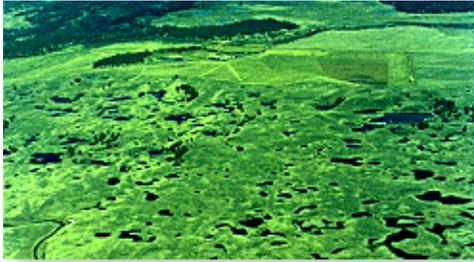
Both alternatives are still used today. The easement alternative is attractive to landowners because it protects existing wetlands in a way that does not interfere with normal farming practices. The easement transfers to the U.S. Fish and Wildlife Service the rights to drain, fill, level, or burn easement wetlands. The easement does not restrict farming, grazing, or haying easement wetlands when they are dry from natural causes.

Easement wetlands are part of the National Wildlife Refuge System. Currently, in the States of North Dakota, South Dakota, and Montana, there are over 1,200,000 wetland acres protected permanently.

Partners for Fish and Wildlife restores drained pothole wetlands, which makes them eligible for wetland easement protection. About 20 percent of the wetlands restored through Partners for Fish and Wildlife become permanently protected at the landowner's request.

## **Grassland Easements**

*U.S. Fish and Wildlife Service*



A conservation easement in western Montana.

The grassland easement, always used in combination with a wetland easement, protects the entire prairie pothole community. The U.S. Fish and Wildlife Service first offered this combination of easements in 1991. Since then, it has been used successfully to retroactively protect the grass uplands around wetlands previously protected by wetland easements, and it is now used concurrently with wetland easements.

The easement terms restrict haying, mowing, and grass seed harvest until after July 15 of each year. Alteration (plowing) of grasslands, wildlife habitat, and other natural features is prohibited. Farming is prohibited. Landowners maintain permanent vegetative cover such as forbs, grasses, and low shrubs. Grazing is allowed at any time.

Grassland easements are part of the National Wildlife Refuge System. In Montana, North Dakota, and South Dakota there are over 400,000 acres in grassland easements. Partners for Fish and Wildlife provides information to landowners on grassland easements and makes referrals to the U.S. Fish and Wildlife Service Realty Division staff. Partners for Fish and Wildlife also restores grasslands, making them eligible for grassland easement protection.

## **Conservation Easements**

*U.S. Fish and Wildlife Service*



A grassland easement in a prairie-pothole complex.

The Fish and Wildlife Service can acquire conservation easements to protect trust species habitat on private land. Typically used where fee acquisition is not desirable or needed, perpetual easements are purchased from willing landowners within designated project areas. Funding to acquire easements can come from the Migratory Bird Conservation Act Fund, Land and Water Conservation Fund, or North American Wetland Conservation Act funds. Easements generally prohibit the subdivision and development of private land while

still permitting traditional agricultural uses. The cost of purchasing an easement depends on its restrictions but generally ranges from 30 percent to 50 percent of the land's full fee value.

This easement is proving to be a useful tool among ranchers, many of whom want to protect their land from future subdivision. This easement protects over 35,000 acres in Montana. Partners for Fish and Wildlife provides technical support to landowners who are in the market for information on land protection options. Referrals are provided to the Realty Division. Perfected easements become part of the National Wildlife Refuge System.

## **Land Trust Conservation Easements**

A land trust is a nonprofit organization established for the purpose of protecting land resources, such as agricultural land, open space, and wildlife habitat. There are national land trusts, such as The Nature Conservancy, and there are local trusts. In nearly all cases, the members of the Board of Directors of the local land trust are members of the community in which the land trust operates. Some land trusts have members, others do not. Land trusts also may be governmental. Many cities and counties, or State and Federal agencies, have land trusts.

The Land Trust Alliance provides the national focus for the growing private land trust movement in the United States. Local land trusts number over 1,200 and new trusts are being formed at the rate of one a week. The formation of this amount of talent and energy is in clear response to some very badly planned housing developments that trampled local concerns for open space and wildlife.

Most private land trusts do not buy easements. They accept donated conservation easements and enforce the development restrictions contained in the conservation easement. Representatives of a land trust will periodically inspect the property to verify that it is not being developed in violation of the conservation easement.

As an example, the Centennial Land Trust is incorporated to preserve open space in an agricultural community. The Trust provides the following information to landowners.

### **The Centennial Land Trust** Morgan and Weld Counties, Colorado

#### *Land Threats*

The conversion of Colorado's agricultural land to nonagricultural uses is a serious issue for all citizens of the State. In addition to its direct impacts on farmers and ranchers, agricultural land conversion affects the cost and quality of food, economic stability, wildlife habitat, air quality, cost of government, and Colorado's western heritage.

#### *The Land Trust Alternative*

In Morgan and Weld Counties, agricultural lands are increasingly turning into housing subdivisions. The trend threatens the area's renowned agricultural reputation, the stability of the agricultural economy, and wildlife habitat. Farmers and ranchers are working to protect the area's agricultural heritage through the Centennial Land Trust, a private, nonprofit land trust.

#### *How does the trust work to save farmland?*

The Trust provides conservation easement advice to landowners and holds conservation easements.

The purpose of the Centennial Land Trust is to preserve open space, including but not limited to farmlands, grasslands, wetlands, forest lands, water use and quality, wildlife habitat, and river corridors for the benefit of the general and local public.

The Trust works cooperatively with landowners, local government, and conservation agencies to develop management plans for land protected by conservation easements.

### *What is a Conservation Easement?*

A conservation easement is a legal agreement voluntarily entered into by a property owner and a qualified conservation organization such as the Centennial Land Trust. The easement permanently protects a property's conservation values by placing some limitations on the property's uses--such as limits on housing subdivisions.

With a Centennial Land Trust easement, there is no condemnation and there is no requirement for public access.

Conservation easements offer several advantages to landowners:

- The property remains in private ownership. The landowner may continue to live on it, farm it, sell it, or pass it on to heirs.
- Estate taxes are significantly lower, sometimes making the difference between heirs holding onto the family land or selling it to pay taxes.
- Easements may provide the landowner with income tax and property tax benefits.
- Easements are flexible and can be written to meet each landowner's needs while protecting the property's resources.
- Easements are permanent, remaining in force when the land changes hands. The Centennial Land Trust, as easement holder, ensures that any easement restrictions are followed.

### Mesa County Land Conservancy

Another example of a land trust is the Mesa County Land Conservancy in Colorado. Farmers in the Grand Valley are working to protect the county's agricultural heritage through the Conservancy.



## **Wetlands Reserve Program**

*U.S. Department of Agriculture - Natural Resources Conservation Service*

The Wetlands Reserve Program is a U.S. Department of Agriculture program offering payments to landowners for restoring and protecting wetlands on their property. The Wetland Reserve Program provides three different mechanisms for wetland restoration and protection:

- A basic cost-share agreement will provide money and technical help for wetland restoration. No easement payment is included.
- A 30-year easement provides resources for wetland restoration and an easement payment.
- A permanent easement provides resources for wetland restoration and an easement payment based on the agricultural market value of the land.

The basis for any of the three Wetland Reserve Program options is the presence of a degraded wetland on which wetland functions can be practicably restored.

By signing a Wetland Reserve Program easement, a landowner transfers most land use rights to the Department of Agriculture. Some uses, such as haying or grazing, but not farming, can be granted back to the landowner at Department's discretion. Partners for Fish and Wildlife biologists assist the Department in screening eligible property and developing management plans.



This photograph shows part of the proposed 7,000-acre Lost Trail National Wildlife Refuge. Refuge acquisition will overlay a Wetland Reserve Program easement on 1,500 acres. This “piggy-backing” will save \$1.7 million in Refuge acquisition funds, money that will be used on other Service protection projects.

A similar partnership is occurring at Boyer Chute National Wildlife Refuge in Nebraska.

## **Farm Service Agency Easements**

*U.S. Department of Agriculture*

The Farm Service Agency is another U.S. Department of Agriculture agency with a program to protect wetlands with easements. Legislation in 1996 applied some serious limits on the Farm Service Agency's ability to use conservation easements, but prior to that time many borrowers used easements or actual title transfers to reduce their debt load. The "debt for nature" concept was particularly attractive to some Farm Service Agency borrowers whose loans were in default.

In process, the Farm Service Agency offered a conservation easement developed by the U.S. Fish and Wildlife Service to a debtor landowner. The debt reduction value of the easement was also presented to the landowner. If the landowner agreed to the offer, his land debt was reduced accordingly and the easement or fee title was transferred to the U.S. Fish and Wildlife Service to become part of the National Wildlife Refuge System. Partners for Fish and Wildlife conducted habitat restoration work before handing off a restored property to the Refuge System.

In Kansas and in Colorado, the Kansas Department of Wildlife and Parks and the Colorado Division of Wildlife manage most easement properties. In the other six Mountain-Prairie Region States, Farm Service Agency transfers and easements add 74,600 acres to the Refuge System.



This photograph shows a Wildlife Management Area in Nebraska. This 900-acre property consists of a Farm Service Agency fee-title transfer to the Service and a Farm Service Agency conservation easement managed by the Service. Both real estate transactions addressed a debt load reduction issue between a landowner and his lender, the Farm Service Agency.