Protecting Historic Places in Perpetuity: An Overview of Preservation Easements

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Presentation Outline

1. Legal Overview of Preservation and Conservation Easements
2. Basics of Easement Stewardship
3. Pennsylvania Case Study: Heritage Conservancy
Legal Overview of Preservation Easements
What is a Preservation and Conservation Easement?

An agreement between a landowner and a nonprofit organization or government agency that limits the use of property for the purpose of protecting a property’s preservation/historic and/or conservation value/resources.
Easements can protect various conservation and preservation values
Common Preservation Covenants & Restrictions

- Covenant to Maintain
- Prohibited Activities
- Conditional Rights Requiring Approval
- Reserved Rights Not Requiring Approval
Benefits

• Owner
  – Landowner has continued ownership and use of property
  – Landowner can sell property or pass it on to heirs

• Preservation Organization
  – Financial investment is small with large preservation value
    • Protection without purchasing the property
  – Perpetual (in most cases)

Risks

• Monitoring and project review
• Enforcement/legal action
State Enabling Laws

- Govern how preservation easements can be created and enforced
- Provide authority for private property owners to burden their properties with restrictions
- ½ states have adopted UCEA, ½ have unique statutes
Acquisition of Preservation Easements

• Non-profit organization acquires property and sells subject to preservation easement or covenants

• Donated by property owner (tax motivated and non-tax motivated)

• Condition of grant (usually term or years; not in perpetuity)
Tax Benefits of Easement Donations
Qualified Conservation Contribution Sec. 170(h)

- Federal tax deduction may be available for the donation of a “qualified” preservation easement to a “qualified” easement-holding organization under Section 170(h) of I.R.C.

- A qualified conservation contribution means a contribution:
  - Of a qualified real property interest;
    - A perpetual restriction on the use which may be made of real property
  - To a qualified organization; and
    - Typically 501(c)(3) and meets requirements of Section 509(a)(2) or (3)
  - Exclusively for conservation purposes.

- Preservation of a historically important land area or a certified historic structure
<table>
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<th>Preservation Easements</th>
<th>Local Ordinances</th>
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<td>Private agreement (owner consent)</td>
<td>Government regulation (owner consent not always required)</td>
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<td>Maintenance obligations</td>
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<td>Regular inspections</td>
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<td>Review request for changes or alterations by independent</td>
<td>Review CofA by city staff and/or commission</td>
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<td>easement-holding organization</td>
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<td>Can be more restrictive than local zoning</td>
<td>Comply with local zoning</td>
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<td>Protected features may be expansive</td>
<td>Protected features may be limited</td>
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<td>Federal tax deduction, lower property taxes</td>
<td>Lower property taxes, transferable rights, flexibility in land use laws, and</td>
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<td>federal tax deduction in Registered Districts</td>
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<td>Appeals to court</td>
<td>Appeal process to other agency, city council, then courts</td>
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Easement Stewardship
National Trust Easement Program
Stewardship

For easement holder, stewardship entails the activities necessary to ensure that the terms of the easement are upheld.

- Developing easement terms that can be monitored/enforced
- Building good property owner relationships
- Monitoring regularly
- Keeping reliable records
- Reviewing/approving requests for approval
- Endowment/Funding Stewardship
- Enforcement of easements
Transactions

An essential part of good stewardship starts when an easement is being drafted.

- Individually evaluate each property to identify its preservation and conservation values.
- Ensure that the terms can be effectively monitored.
- Balancing the restrictions, but not overly limiting that would affect the future preservation and marketability of a property.
Monitoring

Cyclical monitoring of every easement property ensures the easement’s terms are being upheld.

- Visually inspecting and documenting those elements of the property that are regulated under the terms of the easement.
- Monitoring visit can serve to help build relationship with property owner, discuss upcoming plans for property or answer questions.
Enforcement

If a property owner is violating the terms of the easement, the easement holding organization will seek to enforce the easement.

- Violations can range from deferred maintenance, to unapproved alterations, or unapproved uses.
- We try to work with the owner to remedy the violations voluntarily before pursuing legal action.
- Keys to preventing violations – good property owner relationships, regular easement inspections.
PRESERVING AND PROTECTING OUR NATURAL AND HISTORIC HERITAGE SINCE 1958
Solebury Township
Radcliffe Street,
Bristol
ii. Grantor shall not undertake any of the following actions without the prior express written permission of the Co-Grantee, signed by a duly authorized representative thereof:

(1) increase or decrease the height of the Facades;

(2) make any changes in the Facades including alteration, partial removal, remodeling, reconstruction, expansion, refinishing, or other changes with respect to the appearance or Construction of the Facades, with the exception of ordinary maintenance;

(iii) Grantor agrees at all times to maintain the Historic Buildings in a good and sound state of repair and to maintain the Facades and the structural soundness and safety of the Historic Buildings. Subject to the customary provisions of §2.3(a)(v) and (vi), this obligation to maintain shall require replacement, rebuilding, repair, and reconstruction whenever necessary to have the external nature of the Historic Buildings at all times appear to be and actually be the same as the Facades.

(iv) Standards for Review. In exercising any authority created by the Easement to inspect the Property, the Historic Buildings, or the Facades; to review any construction, alteration, repair, or maintenance; or to review casualty damage or to reconstruct or approve reconstruction of the Historic Buildings following casualty damage, Co-Grantee shall apply the Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings, issued and as may be amended from time to time by the Secretary of the United States Department of the Interior (hereinafter the "Standards") and/or state or local standards considered appropriate by Co-Grantee for review of work affecting historically or architecturally significant structures or for construction of new structures within historically, architecturally, or culturally significant areas. Grantor agrees to abide by the Standards in performing all ordinary repair and maintenance work.
East Norriton Township
2. **Scope of Grantee's Estate, Interest, and Easement**

The Facade Easement herein granted conveys to Grantee an interest in the Easement Area consisting of the benefits of the following covenants and undertakings by Grantor.

(a) Without the prior written consent of Grantee, which shall not unreasonably be withheld, Grantor shall not cause, permit or suffer any construction, alteration, remodeling, dismantling, destruction, or other activity which would affect or alter in any material way the appearance of the Facades as viewed from any location on or off the Easement Area, except as specifically required or permitted herein pursuant to the Restoration Program and Minimum Maintenance Program set forth in Exhibit B attached hereto and made a part hereof.

III. **ADDITIONAL PROTECTED ELEMENTS**

A. In addition to the exterior facades of the house and dependency, the following interior elements shall not be removed, moved or altered, and shall be maintained in a reasonable manner:

1. All fireplace mantels on main (ground) level, and 2nd floor.

2. Main center staircase; and partially enclosed winder stairway against east end wall from main level to attic; protected elements include treads, risers, handrails, balusters, and newel posts.
Salford Township
Limitations with respect to Façade

1. Grantor shall not demolish, remove, or raze the Historic Façade except as provided below. This façade includes the front elevation and wraps around the sides to include the roadside two feet of the sides as a setback/offset of any additions.
Joshua Road
Joshua Road