



Miistakis
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Conservation Easement Guide for Municipalities

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A Community Conserve Project

Conservation Easement Guide for Municipalities

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This resource was created as part of **Community Conserve**.



Building environment and conservation capacity for municipalities

For more information about Community Conserve, please visit the website (www.communityconserve.ca) or contact one of the partner organizations:



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Executive Summary

Though conservation easements have been available for use by municipalities since 1996, most municipalities are not fully unaware of how the tool can help them, and most available information is geared towards land trusts rather than municipalities. As Alberta municipalities seek to play a greater role in conserving the Province's ecological and agricultural heritage, more are turning to this tool.

A conservation easement is a legal contract that allows for a landowner to give up certain rights or opportunities in order to protect the environmental, agricultural, or scenic values of a parcel. That "interest in the land" is granted to an eligible holder – which includes municipalities – and runs with the land regardless of owner.

A *municipal* conservation easement means re-orienting the normal viewpoint as a municipality, thinking more like a partner than a regulator, understanding the tool is voluntary, accepting the perpetual nature, committing to on-going stewardship, choosing a level of complexity appropriate for a municipality, and recognizing the landowner as the continuing land manager.

For a municipality, preparing to hold conservation easements means thinking through the *policy* considerations (conservation goals, supporting policies, acceptance criteria, and the development of templates), *planning* considerations (relation to zoning and subdivision, proactive conservation, complementary tools, and if public access is desirable), *financial* considerations (compensation, valuation, operating costs, property taxes, inventory lands and capital gains), and some *special* considerations (supporting programs, working with land trusts, agricultural conservation, municipality types, and the EcoGifts program).

After the conceptual consideration of a conservation easement program, a municipality needs to think through the potential implementation and administration needs. Though each program is different, they all require a municipality to ask the same suite of questions. These include questions around preparing themselves for undertaking a program (the policy framework, required templates, internal structures, communication protocols), creating an actual conservation easement agreement (drafting and enacting), and the long-term work of stewarding the easement (monitoring, enforcing, and reporting on your activity).

Conservation easements are a potentially strong tool for municipalities to use to accomplish their conservation goals, but not a silver bullet, so great care should be

taken by a municipality in the creation and maintenance of a conservation easement program. The good news is that, if that care is taken, a municipal conservation easement program can be efficient and effective.

Introduction

“... or you could use a conservation easement ...”

For many municipalities, that is the sum total of advice and direction they receive on the conservation easement tool. Enabled under provincial legislation since 1996, conservation easements have been available for use by municipalities since that time. Some municipalities quickly embraced the tool, some are still unaware of the tool ... and the other 99% of municipalities are somewhere in between!

Conservation easements held by municipalities are *almost* the same as those held by land trusts and conservancies (a type of non-profit, charitable conservation organization). It is the “almost” that causes confusion, concern, and hesitancy.

“There are numerous guides and resources for land trusts and conservancies regarding conservation easements, but very little for municipalities”

This guide was created because of that “almost”. There are numerous guides and resources for land trusts and conservancies regarding conservation easements, but very little for municipalities.

While the mechanics of the conservation easement tool are the same regardless, the *how* and *why* can be different. Municipalities make their decisions in a very different policy and planning context than land trusts, and need to think about conservation, liability, finances, administration, etc. in a different way.



It is very easy to create a municipal conservation easement program that is costly, doesn't serve your community's conservation goals, and makes the landowners in the municipality mad at you. But it is just as easy to make one that is cost-effective, efficient, and serves the municipality's and local landowners' conservation ambitions.

Why Municipalities Consider Conservation Easements

"... why the heck would you do this ...?"

Conservation easements can seem like a complicated tool, requiring a considerable level of commitment and even liability, begging the question – 'why would a municipality even entertain using this tool?' It's a fair question, and one that several Alberta municipalities have already grappled with.

The answer starts with the knowledge that Alberta is losing its natural places at an alarming and increasing rate, and valuable agricultural land is being fragmented and converted. The species, ecosystem services, and sense of place that these areas support are vital to all Albertans. And many of these special environments exist on privately-owned land.

Decisions made by municipalities can affect the health of these areas – negatively or positively – putting municipalities at the front lines of conservation. Many municipalities feel compelled to take positive action, whether because of existing policies, calls for action from citizens, or simply a growing sense of responsibility.

Unfortunately, the municipal toolbox has been poorly-equipped to support these efforts. Especially few are options to work proactively with landowners in the community, while respecting private property rights, providing some measure of compensation, and seeing conservation results that will endure beyond the next re-zoning or civic election.

Structure of this Guide

The first part of this guide ("**The Basics**") is intended to be 'universal' – that is, it provides information about what conservation easements are regardless of who the 'holder' of the easement is. This is a good place to start if you are new to the

topic, but it is also a good way to understand how municipal conservation easements might ultimately be different.

The second part of this guide (“**Conservation Easements and Municipalities**”) gives users a look at conservation easements purely from a municipal perspective. It does so from four specific angles: policy considerations, planning considerations, financial considerations, and then a collection of special considerations outside those topics. This is not the ‘how-to’ recipe, this is the background information you need so your municipality can use conservation easements most effectively and most appropriately.

The third part of this guide (“**Administration**”) starts into the nuts and bolts. Every conservation easement is different, but this section points to the steps you would follow in any case. It is divided into “Preparing” (setting up the policy and programmatic supports), “Creating” (the actual drafting of a specific conservation easement), and “Stewarding” (the monitoring and enforcement you need to do after the conservation easement is granted).

The fourth part of this guide (“**Resources**”) is the explicit recognition that you cannot get everything you need from this one booklet. The resources include sample conservation easement templates from Alberta municipalities and from the Environmental Law Centre, templates for many of the associated documents and planning supports (monitoring template, baseline report template, etc.), and samples of how Alberta municipalities have incorporated conservation easements into their policies, plans, and bylaws.

The fifth part of this guide is the most important ... and it is not in this document! The fifth part is where you make it your own. **Get legal counsel** because the tidbits of legal breadcrumbs in this guide are not enough. **Talk to your planning staff** because they can flesh out the specific conservation-related planning questions that you are actually facing and how the conservation easement tool might help. Develop your policies based on **expert knowledge** from your conservation staff, or from conservation biologists, agrologists, or whomever can best help you identify what it is your community needs to conserve. And most importantly, **talk to landowners** in your area because conservation easement programs live and die by the landowners involved – if your program does not serve them, it will fail.

The Basics

What is a conservation easement

Conservation easements in brief

A conservation easement is a legal contract that allows for a landowner to give up certain rights or opportunities in order to protect the conservation values of all or a portion of their land. That "interest in the land" is granted to a *qualified organization* – an eligible conservation organization, government agency ... or municipality.

The conservation easement is typically negotiated in perpetuity, and is registered on the title of the land. The landowner retains title, and continues using the land subject to the restrictions in the easement. The landowner is free to sell, gift or will that property, but the easement binds future landowners to the same land use restrictions.



The conservation easement in general – and those land use restrictions in particular – are designed to protect a set of ecological, scenic and/or agricultural values that are catalogued and agreed on at the outset.

To understand how a conservation easement works, think of ownership of land like a bundle of sticks. In that bundle there may be several rights and opportunities – for example, the ability to harvest trees, grow crops, modify wetlands, build buildings, etc. With a conservation easement, the landowner grants certain “sticks” in that bundle to the qualified organization in order to guard the environmental, scenic or agricultural values of the land.

The landowner retains all the other sticks. In other words, they continue to be the landowner, while the easement holder is said to hold an “interest” in the land.

Allowable conservation easement ‘purposes’

Under Alberta law (the *Alberta Land Stewardship Act*), conservation easements can only be used for certain purposes, but they are broadly stated (author’s emphasis):

- the protection, conservation and enhancement of **the environment**;
- the protection, conservation and enhancement of **natural scenic or esthetic values**;
- the protection, conservation and enhancement of **agricultural land or land for agricultural purposes**;

So, for example, you can’t use a conservation easement to conserve the heritage values of an historic building.

It is worth noting that the conservation easement tool is primarily used for the first purpose, the environment. The author is not aware of any instance where a conservation easement was used for scenic or esthetic values. The agricultural purpose is relatively new (added in 2009), so while some land trusts are gearing up for this, there are as yet no purely agricultural conservation easements. It is perhaps for this reason, that ‘environment’ is defined in the legislation, but there are no definitions for protection, conservation, enhancement, natural scenic, esthetic, agricultural land, or agricultural purposes.

Allowable conservation easement purposes:

- ***Environmental***
 - ***Scenic***
 - ***Agricultural***
-

'SUB-PURPOSES'

Although the above are the allowable purposes, the *Alberta Land Stewardship Act* allows conservation easements to be used for certain land uses, provided they are “consistent with the purposes” set out above. Often called the ‘sub purposes’, these are:

- recreational use;
- open space use;
- environmental education use; and
- use for research and scientific studies of natural ecosystems.

Similar to the main purposes, there are no legal definitions of these land uses in the Act.

Effect on a parcel of land

LAND USE AND MANAGEMENT

In the simplest sense, a conservation easement affects future land management by 1) restricting certain practices and opportunities, and 2) prescribing certain practices¹.

Land use *restrictions* are included in the conservation easement document, and the landowner (existing or future) is bound by these restrictions when they are choosing amongst management options. Restrictions tend to be at a relatively high level, and reflect conversion or physical transformation of the land base.

While the list of restrictions varies from one conservation easement to the next, the most common restrictions are on future subdivision and building. Other common restrictions include limitations on cultivation, roads, fencing, timber harvest, excavations, and release of substances.

Land management *prescriptions* are generally included in a management plan, either within the conservation easement document or as an attached schedule. Prescriptions lay out practices deemed to be supportive of the easement's

¹ In this way conservation easements differ from restrictive covenants, which can only restrict practices and opportunities.

conservation goals, with which the landowner must align. They tend to be at an operational level.

ACCESS

There is no requirement to allow public access to land with a conservation easement. Conservation easements are intended to serve the public interest through the conservation of environmental, agricultural or scenic features deemed to have value to society as a whole, not through individual use or benefit. Often, conservation easement agreements are silent on public access and access is left to the landowner’s discretion.

Through the conservation easement agreement, the qualified organization does gain the right of access to the property for the purposes of monitoring and enforcement. This is not an unfettered right of access, and the conditions under which that access can occur (the frequency, and the permissions required/waived) are outlined in the agreement.

“There is no requirement to allow public access to land with a conservation easement”

FUTURE DISPOSITIONS

For a parcel subject to a conservation easement, there are no restrictions on the landowner’s ability to ‘dispose’ of the land (i.e., sell, Will or otherwise pass it to another owner). The conservation easement is said to “run with the land,” meaning (e.g.) the sale of the land will have no effect on the conservation easement and will apply in exactly the same way to subsequent landowners.

The impact of the conservation easement on a subsequent sale may be felt in the determination of the sale price. A parcel that has certain rights and opportunities removed can be expected to fetch a lower price; however, there are cases where a parcel with a conservation easement sold for a higher price, based on the perceived amenity value.

Qualified conservation easement holders

Under the *Alberta Land Stewardship Act* (ALSA), a “qualified organization” is an organization that can hold a conservation easement granted by a landowner.

Though the attributes of qualified organizations are established by legislation, there is no application or other approval process to gain qualified organization status. If an organization meets the prescribed attributes, it can hold conservation easements.

There are two broad classes of qualified organizations under ALSA:

- Government bodies, which includes the Alberta government, provincial government agencies and **local (municipal) government** bodies; and
- Charitable non-government organizations with a land conservation purpose (i.e., **land trusts** or conservancies).

Steps in placing a conservation easement on a parcel

The placement of a conservation easement on a parcel of land is partnership between the 'grantor' (the landowner providing the easement) and the 'grantee' (the qualified organization receiving the conservation easement). Each specific instance is as different as the grantors and grantees themselves are, but the overarching steps are the same.

PLANNING ('do we want to do this?')

The *landowner* needs to determine their conservation goals, as well as their other goals with respect to the land (financial, agricultural, family, etc.). They need to get legal, financial, and succession advice from their professional advisors. They also need to be clear on the ecological, scenic or agricultural values they wish to protect. They need to find an organization, agency or municipality whose goals and interests around conservation easements match theirs.

The *conservation easement holder* needs to have the necessary structures in place (policies, internal controls, procedures, model agreements) prior to engaging landowners. When they are considering a



specific property, they need to determine if it fits with their conservation goals, if the costs can be accommodated (baseline reports, stewardship, potential payments, legal defence), and they, too, need to get professional advice (legal counsel, ecological, agricultural, planning).

After all the planning is done, the landowner and the qualified organization need then to decide, do they want to pursue a conservation easement together? If the answer is yes, they move to the drafting.

DRAFTING ('we're doing it')

The drafting of the conservation easement is a collaborative process. Usually there is a model easement to start with, and the parties work off that to determine the area to which agreement will apply (it can be all or a part of a parcel), the final set of restrictions, the provisions of a management plan if necessary, and other necessary details around compensation, monitoring, access, dispute resolution, etc. When compensation is involved, a financial appraisal is conducted to determine the dollar value of the conservation easement (which is different from the dollar value of the land).

The landowner will determine if they wish to pursue an Ecological Gift certification (see *EcoGifts*, p.37) and initiate that if appropriate and desired. They must also request any necessary mortgage postponement, and draft any necessary affidavits.

The conservation easement holder will conduct a baseline assessment.

ENACTING ('making it legal')

To enact the agreement, the parties will provide all the legally-required notifications, sign the conservation easement and associate documents, and register the conservation easement with the appropriate land titles Registrar to put the conservation easement on the land title. The conservation easement holder will provide the tax receipt or other agreed-upon compensation to the landowner.

STEWARDING ('the conservation begins')

Once the paperwork is done, the actual conservation begins! For the landowner, this means managing the parcel according to the restrictions and any management plan provisions, and agreeing to address any infractions of the conservation

easement. For the conservation easement holder, this means monitoring the property, assessing the parcel against the baseline report, notifying the landowner of any infractions, and enforcing any required remedies.

Beyond the clauses and agreements, this is where the landowner and the conservation easement holder delve into their partnership, watching for changes together, maintaining open lines of communication, and managing disputes in good faith.

MODIFYING ('accommodating a changing world')

A well-constructed conservation easement is drafted with the knowledge that the time horizon is long, and much will change in that time, so its foundations are built to endure. However, ecological, land management, and information/knowledge changes may bring the parties to the conclusion that a modification is required. These are rare and may come with significant ramifications, so they are approached cautiously.

In these cases, the landowner and the conservation easement holder agree on the critical changes (modifications can only occur if both parties agree), determine the conservation implications, determine the tax/financial implications, and agree on a plan forward. Changes are submitted to the land titles office, and notifications made to the Ecological Gifts program, if necessary. The parties also agree how all financial and tax penalties will be allocated.

It is important to note that the *Alberta Land Stewardship Act* allows the responsible Minister to make modifications, or even terminate a conservation easement, if it is "in the public interest" to do so. In the 20-year history of conservation easements in Alberta, this has never happened.

Compensation for landowners

Landowners wishing to place a conservation easement on their property have four primary methods for receiving compensation (for more details, see *Compensation for conservation easements*, p.23). Tax receipts are the most common form of compensation for the grant of a conservation easement, and are available for the donation of a conservation easement to a land trust, provincial agency, or municipality. Full cash payments are rare, and involve compensation for the full value of the conservation easement. 'Split receipts' are a combination of the tax

receipt and cash payment. And finally, a landowner may provide a conservation easement as a way of securing approval for a development proposal (it is important to note that as this is not “given freely and without consideration”, it is not considered a “gift” and is therefore not eligible for a charitable tax receipt).

A qualified appraiser is used to determine the financial value of the conservation easement, and generally uses the ‘before-and-after’ approach (see *Valuing Conservation Easements*, below). This method values the conservation easement without restrictions and then again based on the proposed restrictions; the difference between the two is the dollar value of the easement.

Landowners wishing for enhanced tax benefits can register an environmental conservation easement donation federally as a gift of ecological property (or EcoGift).



Conservation Easements and Municipalities

Once you have the basics of a conservation easement essentially clear, the next step is to understand what this tool looks like *when used by a municipality*.

This section covers the main considerations for a municipality, and divides those into *policy* considerations, *planning* considerations, *financial* considerations, and then some *special* considerations. But first, a few quick points about how a conservation easement held by municipality can be a departure from both the “normal” conservation easement and the “normal” municipal transaction.

A “municipal” conservation easement

Implementing a *municipal* conservation easement means you have to re-orient your normal viewpoint as a municipality, and approach both your relationships with landowners and your perspective on your normal conservation toolbox differently. Here are some key examples of what that means.

A new mindset – With a conservation easement, a municipality becomes a ‘partner’ more than a ‘regulatory body.’ A conservation easement is a contract between two parties, each with clearly laid out rights and responsibilities.

“With a conservation easement, a municipality becomes a ‘partner’ more than a ‘regulatory body’”

Voluntary means voluntary – Unlike other land and conservation tools that municipalities can require as a part of subdivision (environmental reserve, municipal reserve, conservation reserve), conservation easements are voluntary. The *Municipal Government Act* does not provide for municipalities to require a conservation easement as part of subdivision. However, conservation easements can be part of a municipal program or municipal negotiation. For example, several municipalities have a development requirement to ensure enduring conservation, and then list conservation easements as one acceptable approach. The existence of other options maintains the voluntary nature of the conservation easements.

Perpetual means without end – Normally, a municipal council can change something a previous council did; re-zone, a new bylaw, rescind a bylaw, etc. However,

conservation easements are placed on the title of the land, and run with the land beyond the next re-zoning, policy change, municipal election, etc.

Conservation easements require on-going stewardship – Municipalities are familiar with having to maintain and manage their own land, but with a conservation easement you must monitor and steward an interest you have in someone else's land, usually in perpetuity.

Complexity level can vary – A conservation easement can have a few, several or many, many restrictions, and it is up to the easement grantor and the easement holder to determine the ultimate list. More restrictions will mean more monitoring, and more complex restrictions and requirements. For this reason, municipalities may choose a conservation easement complexity level lower than that of a land trust, whose conservation mandate may be based on a multitude of ecological conservation considerations.

The landowner is the land manager – One of the barriers to municipalities acquiring conservation lands is the on-going cost and liability of land management that comes with land ownership. In the case of a conservation easement, while the municipality holds the easement, the landowner continues to be the land manager, responsible for all aspects of land ownership and management outside of the restrictions in the easement.

Policy considerations

Before getting into the details of how a conservation easement program might play out operationally, a municipality needs to consider how they will enable the use of the tool at the policy level. The following are some fundamental policy considerations (for a list of practical questions, see *Establishing the policy framework*, p.39).

What are your municipality's conservation goals?

It is important to remember that a conservation easement program does not dictate your conservation goals – it is a tool to help you accomplish goals *you already have*. If those goals are clearly articulated, your conservation easement program is on much sturdier ground, and points to the already-determined goals.

A conservation easement is also not a silver-bullet solution, able to accomplish all your conservation goals. For example, conservation easements are well-suited to conserving riparian areas, wildlife habitat/connectivity, tree stands, and shelter belts. However, they are not well-suited to protecting against the impacts of oil and gas development², or historic resources³. Make sure the tool will actually support the conservation goals you want it to.

At what policy level should you enable conservation easements?

This is a trick question, because a municipality will likely want to include some enabling provisions at various levels. However, those provisions will serve quite different purposes. For example:

Municipal Development Plan – At this level, most municipalities simply want to note the tool is a possibility that the municipality would look on favourably. It may include some description of the kinds of conservation values the tool would be used for, as well.

“A municipality will likely want to include some enabling provisions at various levels”

Land Use Bylaw – Some municipalities choose to create a specific district that enables conservation easements. In these cases, they are signaling an intent that the conservation easement tool is to be used to support a certain land use type. In some cases, municipalities use this in conjunction with other programs such as (e.g.) Transfer of Development Credits⁴, identifying the district from where development credits can be transferred after granting a conservation easement.

Area Structure Plans – When an Area Structure Plan is developed, it lays out the proposed land uses and the location of transportation and utility infrastructure, but it may also lay out the areas valuable for environmental, scenic and/or agricultural reasons. The Area Structure Plan may speak specifically to the conservation easement tool as a way to protect the conservation values of those areas, or more generally as a mechanism that would be acceptable for conserving those values.

² With a conservation easement, a landowner can only grant restrictions on rights and opportunities he/she already has. Because most landowners don't own the subsurface rights, they cannot restrict access to those resources.

³ Under the Alberta Land Stewardship Act, the allowable purposes for a conservation easement do not include historic resources.

⁴ For more information on the Transfer of Development Credits tool, see www.tdc-alberta.ca

Dedicated Bylaws and Policies – The conservation easement tool may also be enabled in a specific bylaw or policy. Some municipalities create a Conservation Easement Bylaw to cover all aspects of a conservation easement program (areas in the municipality to which it applies, goals, criteria for acceptance, administrative format, etc.). In other cases, a bylaw with a specific purpose may include reference to the conservation easement tool as an implementation mechanism (e.g., a Transfer of Development Credits bylaw, a riparian protection bylaw, a land acquisition policy, etc.).

Open Space Plans, Biodiversity Plans, Agricultural Conservation Plans – Municipalities may have various municipality-wide plans or strategies that speak to conservation of certain landscape values important to the community. These plans may speak to the conservation easement tool specifically as a mechanism for implementation (expanding the ecological impact of an open space system, for example). Perhaps most importantly, these plans are most likely to articulate the specific conservation goals, which can guide selection criteria, and which the conservation easement document can mirror.

Acceptance criteria

In the early stages of a conservation easement program, it may seem ideal to accept any offer of a conservation easement from any landowner. However, these agreements are held in perpetuity, and the stewardship responsibility can soon become overwhelming⁵. It can therefore be important to establish a policy up front with well-crafted criteria of when the municipality will or will not accept a conservation easement.

These criteria can include what kinds of land you will accept (agricultural, environmental), what



⁵ For example, a municipality that only accepts two new easements every year, will be responsible for tracking and monitoring 20 conservation easements within the decade.

kind of environmental features you will prioritize, whether you have a minimum size, what form of compensation you will provide (tax receipts, development approvals, split receipts, or cash payments), etc.

This policy can be a stand-alone conservation easement policy, or it can be part of another policy or program (e.g., a conservation easement bylaw, the open space policy, etc.).

Conservation Easement Templates

One of the most important policies to develop is your “model” conservation easement. Ultimately, every conservation easement agreement is different, but a conservation easement holder should start with a template that is the basis of negotiation. This is especially important as a communication tool to explain to potential granters (landowners) what is involved in a conservation easement.

Other templates that can be important to have are the baseline document report, the monitoring report, and the management plan (if you plan on using them). For direction to sample templates, see *Templates and Drafting Resources*, under *Appendix 3: Resources*, p.54)

Planning Considerations

Conservation easements might seem to fit best into the realm of the parks, conservation, land management, or agricultural services departments. However, it is often the planning and development department who deal with the planning for and securement of the conservation easement. For that reason, it is important to be aware of the interplay between the planning process and the use of conservation easements.



Conservation easements vs. zoning

“Which takes precedence – the conservation easement or the districting/zoning?”

This is a common question, and the answer is “both – depending on the circumstances.”

For example, a conservation easement may say that one more house may be built on a parcel, and even identify the building envelope. This does not, however, mean the landowner has the ‘right’ to build a house. Such a house must still be allowed by the local land use district, and the landowner must still secure the necessary building permits. Conversely, if the land use district allowed several houses to be built on the parcel, the conservation easement would restrict that to only one allowable house.

In other words, if the conservation easement does not allow for a use – even though the zoning does – the use may not proceed; conversely, if the conservation easement allows for a use – but the zoning does not – the use may not proceed.

Conservation easements and subdivision

For municipalities, many of the opportunities to actively pursue conservation are enabled at the subdivision stage, when they can require certain reserves and actions be taken in order to receive the subdivision approval. Conservation easements have a different relationship to subdivision than other municipal conservation tools.

Most importantly, while a municipality can require conservation reserves, environmental reserves and municipal reserves as part of the subdivision approval, they cannot require a conservation easement as part of that approval. However, because a subdivision (and development) proposal can be a multi-faceted negotiation, some municipalities have accepted the proposed inclusion of a conservation easement as factor weighing in the proponent’s favour or satisfying a broader conservation requirement.

“A municipality cannot require a conservation easement as part of a subdivision approval”

One other note about conservation easements and subdivision. A conservation easement need not be placed on the entire parcel, but if the landowner wishes to place a conservation easement on only a portion of their parcel, it does not need to be subdivided to accommodate this. Instead, the boundary of the conservation easement is surveyed or described, and that survey or description is included in the conservation easement document registered with the Land Titles office.

Proactive conservation

As noted above, many of the conservation tools in the municipal toolbox are enabled through the subdivision process. This means that the municipality must wait and react to subdivision and development proposals before these tools can be used.

The conservation easement tool, however, can be used proactively by a municipality, giving it a much greater degree of flexibility in the planning process. For example, after identifying areas of critical importance to the municipality, they can approach landowners in those areas and initiate a conversation about the grant of a conservation easement. This proactive capability can make conservation easements a very strategic tool used as part of a plan for parks, open space, conservation, agricultural, or other priorities.

Complementary tools

When working to include conservation easements into the planning process, it can be tempting to view it as a cure-all tool. Instead, it is most effective when it is playing its unique role, and other conservation tools are playing theirs. This makes it vital for a municipality to place the conservation easement tool side-by-side with other tools to see which works best where. This would mean looking at how it would work in concert with environmental reserves, environmental reserve easements, conservation reserves, full-title purchase, full-title donation, or other tools. It can be very useful to spatially map where each of these would be most likely to serve the municipality's conservation goals.

Planning for public access

Some conservation easements allow for public access (usually at the request of the landowner), but most do not. It can be challenging for municipalities to remember that these lands are still in the hands of the landowner. The municipality holding a conservation easement will have no more right of access than allowed in the conservation easement (for monitoring and enforcement), and the landowner owns and bears all the costs and responsibilities of any allowable built infrastructure.

Where this can become difficult to remember is when planning for trails, parks and other publicly accessible amenities and infrastructure. If there is no public access, the conservation easement land should not be included in any trail system plans or recreational park plans.

As well, the municipality cannot use these lands for public utility lots, lift stations or any other municipal use they might be accustomed to including in “undeveloped” lands.

Having said that, a municipality can negotiate with the landowner to have the public access integrate with (e.g.) the municipality’s trail system. In these cases, the two parties need to be clear on responsibilities, and the municipality should explore their needs for indemnification.

Financial considerations

There are a number of financial matters associated with conservation easements that will be of concern to municipalities, especially related to potential compensation, operating costs, and property taxes.



Compensation for conservation easements

A critical question to answer at the outset is how the municipality will compensate landowners for the grant of a conservation easement, and what policy direction will guide such decisions.

Recall that municipalities have fundamentally four options for providing financial compensation: a tax receipt, a cash payment, a split receipt (a combination of the first two), and a development approval.

TAX RECEIPTS

A municipality is able to provide a charitable tax receipt for any donation, including the gift of a conservation easement. This is simplest and most efficient way to handle compensation, as it is not dependent on municipal finances or grant programs which may fluctuate from year to year. There are three important considerations here.

“A municipality is able to provide a charitable tax receipt for any donation, including the gift of a conservation easement”

First, the tax receipt can only be given in return for a donation. The Canada Revenue Agency has strict rules around this which centre on whether the gift was “freely given” meaning it was given voluntarily, and that it does not provide an ‘advantage’ for the donor⁶.

Second, don’t be stumped by the suggestion that “land rich and cash poor” landowners cannot use a tax receipt. Many farmers and ranchers in Alberta have worked with their accountants to come up with creative uses for a tax receipt that can wipe out income taxes over as much as 11 years.

Finally, a conservation easement can take time to work through all the notifications and details. If a landowner is looking to apply the tax receipt in the current tax year, be conscious of the timing to ensure that that is a realistic expectation.

⁶ See the Canada Revenue Agency website (<http://www.cra-arc.gc.ca/chrts-gvng/chrts/prtnng/gfts/whts-eng.html>) for more details on what is a gift.

CASH PAYMENTS

Cash payments for a conservation easement are less common than the provision of a tax receipt, but they may be an option. Municipalities who pursue this avenue are generally in one of two circumstances. First, it may be that they have funds associated with another program or initiative, which they can apply opportunistically to the purchase of conservation easements. Second, they may have already begun a program of land conservation with an eye to strategically purchasing lands, but see the conservation easement route as a much more affordable option.

There is no question that the purchase of conservation easements is less cost-prohibitive to outright full-title purchase of land. As well, the on-going costs to the municipality are lower as there is no requirement to be the land manager after acquisition.

SPLIT RECEIPTS

As noted before, 'split receipting' is a combination of cash payment and tax receipt. Essentially, once the financial value of the conservation easement is determined, a portion of that value is compensated with cash and portion is compensated with a tax receipt.

Since its enabling and enactment by the Canada Revenue Agency, this opportunity has been used extensively. This approach addresses the common situation where a conservation easement holder is able to gather some cash but not the full amount, and the landowner is financially able to accept a tax receipt for a portion of the value but not the full amount.

One key stipulation to be aware of is the limitation of 80% cash payment. Because a tax receipt can only be given in return for a freely-given gift, the Canada Revenue Agency deems that if more than 80% is compensated with cash, it calls into question whether there is actual 'donative intent' at that point.

DEVELOPMENT APPROVALS

Of the four compensation methods, the interplay of development approvals and conservation easements is the most complex. First, the conservation easement tool

is voluntary⁷ so it cannot be required, and it is also not listed as a basis for subdivision approval⁸. For this reason, the use of conservation easements in the subdivision and development approval process has tended to be part of the proponent 'building a case' for approval, with the municipality indicating within the negotiation that such a choice would be viewed positively by the council. If there are other ways for the proponent to secure approval, then the conservation easement option can still be considered to be a voluntary one.

The second confounding factor is that a conservation easement granted by a developing landowner as part of a negotiation to secure subdivision or development approval would not be viewed as "freely given" and without "advantage" to the grantor. For this reason, the municipality would not be able to provide a charitable tax receipt.

For these reasons, it is very important for a municipality to have legal counsel review their intention to use the conservation easement tool in this way.

CONSERVATION GOALS AND EQUITABILITY FOR LANDOWNERS

Beyond the simple mathematical calculations of compensation are two factors on which municipalities should reflect. The first is how you will handle issues of equability. For example, if you are able to pay cash value for a given conservation easement, will you be able to provide the same option to the next landowner? If not, ensure you have a solid rationale for this decision.

The second is how to avoid conservation easement compensation discussions becoming solely about money. A conservation easement is *not* a way to maximize the financial return on the disposition of land; the tax and financial options are intended to offset the financial impact on a landowner exercising their desire to protect the conservation values of their property. The first type of compensation should be the realization of those conservation goals.

⁷ The Alberta Land Stewardship Act states that a "registered owner of land may, by agreement, grant to a qualified organization a conservation easement" (Sec 29(1)) making it clear that it is voluntary tool.

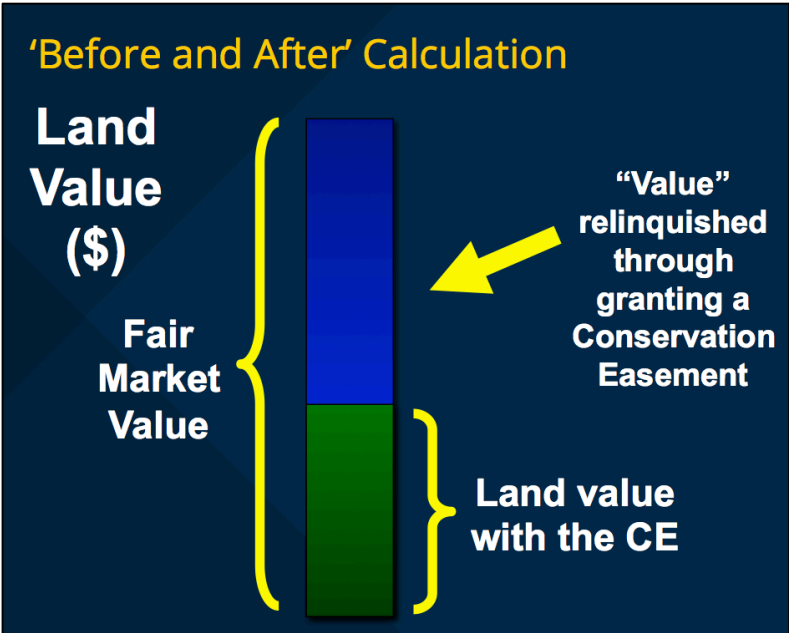
⁸ Neither Municipal Government Act (Sec 655) nor the Subdivision and Development Regulation list conservation easements as a potential approval requirement.

Valuing conservation easements

Whenever there is some sort of financial consideration of a conservation easement (a tax receipt, a cash payment, etc.), there needs to be a credible appraisal of the cash value of *just* the conservation easement. This is separate from the appraisal of the financial value of the land as a whole.

The most common valuation approach is known as the "before and after" process (see Figure 1: 'Before-and-After' Conservation Easement Valuation). This process assumes that the value of a property is heavily determined by the uses to which it can be put and the marketability of those uses and associated products. Because a conservation easement places restrictions on several land uses, the property is deemed to have an associated decrease in value.

The "before and after" process starts by valuing the property at the "fair market value" – an estimation of the price it would fetch on an open market with willing buyers and willing sellers. Subsequently, the appraiser estimates the price the land would command if its sale value was diminished by the loss of certain land use opportunities. The appraiser takes into account the specific restrictions proposed in the conservation easement and creates a second estimate of "residual" market value, presumably a decreased one.



The difference between these two estimates is considered to be the financial value of the conservation easement.

There are no hard and fast guidelines as to what those values might be, and the values of conservation easements can vary dramatically. However, the biggest determinant of value is usually local pressure for more intensive development.

This pressure inflates the "fair market value" and thereby inflates the difference between fair market and residual value.

There may be very few sales of properties with conservation easements on them in a given area, so the appraisal procedure requires significant skill. It is critical to use a certified appraiser, ideally one with experience assessing the value of conservation easements. As well, the Ecological Gifts Program has certain requirements of the conservation easement appraisal and of the appraiser, so it is important to consult their guidelines when choosing an appraiser.



The municipality's operating costs

Beyond the payments that a municipality might make to acquire conservation easements, there are, of course, operating costs. These costs will vary dramatically depending on whether your municipality is seeking to passively acquire a single easement or two, or setting up an aggressive proactive program (or something in between!). Regardless, the areas where costs would be incurred are generally consistent, and can be divided into *establishment*, *acquisition*, and *on-going* costs.

ESTABLISHMENT COSTS

Establishment costs are those costs that a municipality would incur in setting up a conservation easement program. Again, these will vary, but at a base level would likely include the following:

Policy development – Depending on the approach taken by the municipality, these costs may simply be subsumed in the development of various policies and plans (Municipal Development Plan, Land Use Bylaw, Area Structure Plan, etc.). However, this would include staff time and any consultants needed for the program design.

Templates and documentation – The templates needed for a conservation easement program will take specific expertise to develop, but there are models and examples to draw on from other Alberta municipalities. These might include patterns for the conservation easement agreement, baseline report, monitoring template, and management plan. As well, it is worthwhile creating an internal process manual.

Legal advice – Every aspect of your conservation easement program should be submitted to legal counsel to identify the specific liabilities or issues for your municipality.

Recordkeeping – At the outset it is important to be clear as to what your internal recordkeeping structures and protocols will be. Precisely how this looks will vary between municipalities based on their existing structures, but the process should accommodate the planning documentation needs (how will the existence of conservation easements be captured in such a way that the planning department is aware of them on an on-going basis), the legal documentation needs (how will legal, land services, corporate service, etc. be aware that parcels are encumbered by an easement held by the municipality), and tax role documentation needs (most municipalities track parcels in the community by tax rolls, so how will tax role information reflect the existence of conservation easements).

Promotion – Some programs are created intentionally to be passive – accepting conservation easements when they are offered. However, programs that are created with the intent to achieve certain goals or target certain land areas/types will need to have a promotion component. This would involve both staff time and promotional materials/expenses.

ACQUISITION COSTS

After a conservation easement *program* is established, there are costs associated with each individual conservation easement discussion and transaction. These will likely include the following:

Baseline reports / management plans – Each conservation easement will require a baseline document report that outlines the conservation values and features of the property. Municipalities may also choose to create a management plan for each conservation easement. In both these cases, dedicated staff may develop these using the template, or these might be hired out.

Appraisal – If there are any financial dimensions to the grant of the conservation easement (e.g., a tax receipt), an appraisal by a qualified appraiser will be needed. Most often this is undertaken by the landowner, but in some cases the municipality may wish to contribute to that cost.

Discussion/Negotiation – (Staff time) Acquiring a conservation easement requires conversation – invaluable time spent talking at the outset that can avoid problems later on. This could be roughly divided into time spent answering questions conceptually, and time spent negotiating the specifics of the conservation easement document (those that might vary from the template conservation easement). This could involve staff from more than one department – for example, agricultural services may initiate the discussion, while land services might finalize the agreement.

Legal review – Both the landowner and the municipality should have the conservation easement document reviewed by their legal counsel. The use of a template will reduce this time considerably. For some municipalities, this would also involve their land services department.

Implementation – (Staff time) Once the agreement has been drafted, a couple of

“Acquiring a conservation easement requires conversation – invaluable time spent talking at the outset that can avoid problems later on”

steps are required to execute the agreement. These include sending out the required notifications, and registering the conservation easement with the land

titles office. The municipality will also need to account for the time spent entering information into any internal tracking or documentation processes.

Ecological Gift Certification – (Staff time) If the grant the conservation easement will be a ‘gift of ecological property’ (or an ‘EcoGift’), that gift must be certified as such. This is the responsibility of the landowner, but the conservation easement holder usually assists in this process.

ON-GOING COSTS

After setting up a program, and after negotiating each conservation easement, the municipality will face some on-going costs they should plan for. These include the following:

Monitoring – Monitoring is essentially assessing the current state of the conservation easement lands against the original baseline document report and the conservation values it catalogues. Monitoring can take several forms, but is generally done once per year using a standardized monitoring form. It is important to note that the complexity of monitoring is tied to the complexity of the easement’s restrictions (and prescriptions). For example, repeating a series of photo points and ensuring no subdivision or building has happened will be more straightforward (and less costly) than repeating range health assessments, extensive vegetation surveys, etc.

Enforcement – Most ‘enforcement’ can simply happen during the annual monitoring visits, and involve only a conversation, as most infractions are unintentional. However, municipalities should be aware that a conservation easement is ‘perpetual’ meaning it is very likely at some point a matter will go to court. Costs here are difficult to predict, obviously, but legal services should be prepared to include this in their basket of legal considerations.



Promotion – As noted above, for a conservation easement program which a municipality wishes to actively promote, there will be costs related to both staff time and possibly communication materials.

Recordkeeping – Although likely to be minimal cost once set up, it is important to note that on-going recordkeeping should be explicitly identified and budgeted for. Because a municipality may actually see few if any conservation easement acquisitions in any given year, this activity may go untended, with obvious consequences if that were to happen.

There are two important items for municipalities to reflect on when they are budgeting for on-going costs.

First, there are many efficiencies of which municipalities can take advantage, for example:

- Agricultural Fieldmen may be able to conduct landowner visits and quick visual assessments in the course of their work;
- Existing recordkeeping systems might need only be ‘tweaked’ to accommodate conservation easement records; and
- ‘Monitoring’ for subdivision and building activity is very easy for a municipality since permission for these activities must come from the local government.

Second, because the municipality does not ‘own’ the land subject to a conservation easement, there is often no natural budget line on which to dedicate on-going costs. In other words, the conservation easement is not an *asset* in the traditional sense, so municipalities need to be creative to ensure its financial stewardship is accounted for.

“Because the municipality does not ‘own’ the land subject to a conservation easement, there is often no natural budget line on which to dedicate on-going costs”

Property taxes

For the most part, property taxes are unaffected by the placement of a conservation easement, because the land is still owned and used by the landowner, and is still subject to the same property tax regime.

There are a couple of situations where property tax revenues may be affected. The first is if the land's tax assessment is lowered because the conservation easement has lowered its market value.

The second is if the municipality chooses to tax the property differently. Some municipalities have chosen to tax conservation land at the lowest available rate – usually the agricultural rate (however, if the land is in agricultural use, it would be taxed at that rate in any case). Yet other municipalities provide a specific property tax exemption (as much as 100%) for conservation easement lands. Applying this type tax relief can be administratively onerous (e.g., it may require annual resolutions from Council), so municipalities may choose to provide the relief through a grant rather than an exemption.

Inventory lands and capital gains

When a municipality is looking to provide a tax receipt for the donation of a conservation easement, they must be conscious of whether that land is held by the landowner as 'capital' or as 'inventory.'

Generally, if land is acquired by a business for the purpose of re-selling it, it is 'inventory,' and the business can avail itself of any tax deductions available against the costs of acquiring and maintaining that 'inventory.' A gain in the value of the land, however, is considered profit, and taxed as profit.



Land that is deemed 'capital' is land that is used to produce rents or goods and services, or for personal enjoyment. Any change in the value from acquisition to disposal is considered a 'capital gain', and taxable as such.

The reason this distinction is important is that only 50% of a capital gain is taxable, while 100% of the profit is taxable. And even in the case of a donation, tax is payable on the realized capital gain or business profit.

As well, if the gift of land is certified as an Ecological Gift, the capital gains inclusion rate is lowered to 0%, meaning none of the capital gain is taxable. A similar reduction is not available for the tax rate on 'profits' from 'inventory' lands.

Special Considerations

The previous three sections (Policy, Planning, and Financial) cover the base considerations for a municipality thinking about a conservation easement program. While potentially not core considerations, there are a handful of items which municipalities are likely to come up against ... or should plan to come against!

Conservation easements as a Support to other programs

Conservation easements are often more like a power source than an appliance – they enable other municipal programs to run or reach a higher potential. Some examples of these include:

- *Transfer of Development Credits* – the protection device at the base of a Transfer of Development Credits program is the conservation easement (see www.tdc-alberta.ca for more information on this tool).
- *Conservation design* – Conservation design seeks to balance development with conservation, but the tool behind the 'conservation' effort is often the conservation easement.
- *Bareland condominium (bareland strata)* – Although not a requirement in a bareland condominium, conservation easements can be used to perpetually conserve the residual communal space.
- *Parks and open space planning* – Conservation easements can be placed adjacent to parks or open spaces to increase their 'effective' area.
- *Connectivity planning* – Once a municipality knows where its critical connections are from an ecological network perspective, conservation easements can be used to secure small but crucial pieces.

- *Wetland mitigation* – Conservation activity undertaken to offset wetland disruption often raises the question whether promising not to wreck something else is adequate; perpetual conservation of that ‘something else’, through a conservation easement, may provide the necessary ‘additionality’.

Working with a land trust instead

A land trust (a conservation charity with a primary purpose of land conservation) may be a vital partner in using conservation easements, and that partnership may take several forms.

Land trusts can hold conservation easements that fit municipal purposes

Sometimes a municipality's program will benefit from the use of conservation easements, but the municipality does not want to hold the easement. This could occur (e.g.) with conservation easements as part of a municipal Transfer of Development Credits program, or easements adjacent to municipal conservation land, or other applications. In these cases, a land trust or conservancy operating in the area might be a viable option.

The key is to make sure that the land trust's purposes align with the municipality's purposes. For example, the municipality may be looking to use conservation easements for scenic purposes, but the land trust only holding them for environmental purposes.

“A land trust may be a vital partner in using conservation easements, and that partnership may take several forms”

Land trusts can be stewardship partners

Municipalities are often intimidated by the on-going responsibilities of monitoring conservation easements, or may feel they do not have the internal expertise. Land trusts have specific expertise in this area, and can be retained to play that stewardship role. Municipalities may find it more cost effective to pay a land trust, rather than dedicate or hire staff for this purpose.

Municipalities can catalyze the creation of local land trusts

Often, a municipality wishes there was a local land trust in the community that could hold conservation easements. A municipality can help catalyze the creation of such a group. That effort could involve providing annual funding or office space, taking a seat on the board, providing community support, etc.

It is worth noting that in Alberta, at least three municipalities have played a key role in the creation of a local land trust in their area⁹.

Conserving agriculture with a conservation easement

Although Alberta has had conservation easement legislation since 1996, when the existing legal provisions were moved into the new *Alberta Land Stewardship Act* in 2009, a crucial addition was made. Conservation easements can now be used to protect “agricultural land or land for agricultural purposes.”

It is important to note that since the first conservation easements in Alberta, agricultural landowners have been using them to protect their ability to keep farming or ranching. However, in those cases, the easements were created to conserve the *ecological values* of the land, but the restrictions were written such that *agricultural use* could continue unhindered.

There are as yet no conservation easements in Alberta created purely for conserving agricultural land, but the purpose is clearly available. The policy intent on the part of the provincial government is unclear¹⁰, but the availability of this new purpose is not. Already at least one land trust has indicated their willingness to



⁹ These include the MD of Foothills and the Foothills Land Trust, the City of Edmonton and the Edmonton and Area Land Trust, and Mountain View County and the Legacy Land Trust Society.

¹⁰ See *Conservation Easements for Agriculture in Alberta: A Report on a Proposed Policy Direction* at http://www.ce-alberta.ca/pages/pdf/Conservation_Easements_for_Agriculture_in_Alberta.pdf

take purely agricultural conservation easements (the Legacy Land Trust Society) and at least two municipalities make reference in their MDPs to encouraging conservation easements for conserving agricultural land (Red Deer County and County of Wetaskiwin).

Large municipalities vs small; urban municipalities vs rural

“Conservation easements are only for rural municipalities.”

“Conservation easements don’t work on small parcels.”

“Small municipalities don’t have the resources to hold conservation easements.”

These are common statements about conservation easements and municipalities, but they are all based on misconceptions. Although the considerations are different for small vs. large or urban vs. rural municipalities, conservation easements have been used effectively across North America by municipalities of all sizes and types. The misconceptions are based on some myths about conservation easements.

One myth is “bigger easements are always better”, leading to the belief that only rural municipalities (with large parcel sizes) can use the conservation easement tool. Of course, all other things equal, a larger parcel provides greater conservation value. However, the choice to hold an easement is based more on the importance of the parcel than simply the size. This is akin to a municipality choosing to create a park – a smaller park on a vital parcel may be critical to a municipality’s conservation goals.

“Although the considerations are different for small vs. large, or urban vs. rural municipalities, conservation easements have been used effectively across North America by municipalities of all sizes and types”

Another myth is that small municipalities would be overwhelmed by the administrative burden. The necessary costs and resources are obviously not to be taken lightly (see *Financial Considerations*, above). However, the resources required to secure and steward a conservation easement is very much dependent on the complexity of the easement – which is very much dependent on the conservation goals of the municipality. For example, a conservation easement that restricts subdivision and further buildings may largely achieve the conservation goals of the

municipality. These would be relatively easy to monitor, as subdivision applications and building permits already come to the municipality. As well, these may be parcels that (for example) agricultural fieldmen are already visiting for other reasons.

EcoGifts

The Ecological Gifts Program (or EcoGifts) was established by the federal government to provide incentives for landowners who protect their ecologically sensitive land (*“areas that significantly contribute to conserving Canada’s biodiversity and environmental heritage”*). Municipal governments are automatically eligible to receive ecological gifts.



Ecological Gifts are eligible for special benefits, including reductions on capital gain taxes, certainty on the value of appraisal, extension of the period for which the tax receipt can be used (to 10 additional years), and an increase in the amount of the receipt you can claim in a given year.

To access these benefits, the property must be certified by the local representative of Environment and Climate Change Canada as being ecologically sensitive land. As well, they must be “gifts” (e.g., conservation easements provided to secure special development considerations from a municipality would not be considered “gifts”). Finally, the conservation easement must be granted in perpetuity.

A key part of the EcoGift process is having the fair-market-value appraisal reviewed and certified by Environment and Climate Change Canada. While this can be a protracted process, it means that the landowner is protected from having the Canada Revenue Agency review and re-assess the appraisal value later.

The EcoGift benefits are provided in exchange for security of the conservation easement, which means any “change in use” in the easement agreement must be approved in advance by the EcoGifts program to ensure the changes do not negatively affect the conservation values. Failure to obtain this authorization can subject the qualified recipient to heavy financial penalties.

Administering a Municipal Conservation Easement Program

If the information in the previous section were considered to be the 'building blocks' of a municipal conservation easement program, this section would be the 'blueprint.'

Although every conservation easement program is different, the steps a municipality must take in setting one up have a consistent pattern. These include:

- **Preparing** (*structuring the conservation easement program*)
- **Creating** (*creating the actual conservation easements*)
- **Stewarding** (*ensuring conservation is perpetual*)

Use the information in the previous section to answer the implementation questions below, and you will have the fundamental structure of a municipal conservation easement program.

Preparing

(structuring the conservation easement program)

There can appear to be a huge number of questions a municipality has to ask and answer when setting up a conservation easement program. However, in most cases, they get answered once, and the required policy then developed. Some questions are very simple, and just require formally articulating the deliberations and decisions that have already occurred.

In practical terms, designing the administrative structure of a municipal conservation easement program has the following components:

- Establishing the policy framework
- Assembling the required templates
- Setting up the internal structures/protocols
- Creating communication procedures and materials



Establishing the policy framework

ARTICULATE THE PROGRAM GOALS

- **What are you trying to conserve?**
- **What are you trying to conserve using conservation easements?**
 - Environmental, scenic, or agricultural lands?
- **Are your conservation easement program goals specific to a certain sub-category?**
 - Certain classes of soil? Certain ecological features or processes? Certain viewsheds? Certain districts, watersheds, or other geographies?
- **Will you only accept conservation easements that have certain criteria?**
 - Only parcels of certain size? Only parcels adjacent to existing conservation lands?
- **What role will conservation easements play relative to other tools?**
 - Will you use conservation reserves in some cases, and if so, when? Will you encourage conservation easements where environmental reserves are available? Will conservation easements near parks or other existing environmental open space be given preference?

“Articulate goals: What are you trying to conserve with conservation easements?”

REFLECT GOALS IN YOUR PLANS AND POLICIES

- **How will your MDP enable conservation easements?**
 - Broad statement of purpose? Identify general areas? Identify general circumstances? Identify how conservation easements can be used at the ASP level? ALSA stated as enabling authority?
- **Will your Land Use Bylaw include reference to conservation easements?**
 - Identifying a conservation easement district(s)?
- **Will you have a dedicated Conservation Easement Bylaw?**
 - One for each instance of a conservation easement? One that outlines the criteria and general operating procedures for any conservation easement? Include specific criteria here?
- **How will Area Structure Plans enable conservation easements?**
 - Take direction from other plans? Identify specific places for conservation easements? Identify specific circumstances where conservation easements would be accepted? List conservation easements as one conservation option available to developers seeking approval?

- **Will you have a Conservation Easement policy?**
 - Identifying under what circumstances will you accept conservation easements? Outline your compensation policy? Outline an approval process? Direct how the tool would be used in ASPs and other plans? Limit the number in a given year?
- **Will your sustainability / agricultural viability / open space / biodiversity plans enable conservation easements?**
 - 'Anchor' plan for enabling conservation easements? Support implementation plan with practical direction?
- **Do your plans/policies track a clear line from higher-level conservation easement policy to lower-level implementation policy?**
 - Are broad goals in higher level plans and site-specific goals in lower level plans? Will one plan/policy capture this entire cascade?



ARTICULATE THE FINANCIAL POLICIES

- **Will you provide any property tax benefits?**
 - Decreased tax on conservation easement properties? Waived property taxes on conservation easement properties? Agricultural rate assessment for conservation easement properties?

- **How will you compensate grantors of conservation easements?**
 - Tax receipt? Payment? Split receipt? Are their special circumstances where you will deviate from the policy?
- **Will you provide financial support to conservation easement donors?**
 - Will you cover any associated costs (appraisals, baseline reports) for conservation easement donors? Will you share costs? Are their special circumstances where you will deviate from the policy?
- **How will you budget for your conservation easement program?**
 - Annual allocation? Special requests? Inclusion in job descriptions? When special resources become available?

“What will be the role of the relevant departments?”

DETERMINE THE PROGRAM ROLES

- **Who will be the lead department/authority for your conservation easement program?**
 - Support roles? Inter-department communication?
- **What will be the role of the relevant departments?**
 - Planning? Conservation and parks? Agricultural services? Legal? Lands? Assessment? Communications? GIS?
- **Will you have an advisory body?**
 - Ag services board? Local land trust? Local conservation group? Citizen body? Existing committee?

Assembling the required templates

- **Do you have a standard ‘process’?**
 - What are the generic steps in the conservation easement program process? For landowners? For the municipality?
- **Do you have a conservation easement template?**
 - One template for all? Different templates for environmental vs. agricultural conservation easements? What are the base restrictions? What is ‘non-negotiable’?
- **Do you have a monitoring template?**
 - What gets monitored? How is that recorded?

“Different templates for environmental vs. agricultural conservation easements?”

Does the template vary in any circumstances? Does the monitoring reflect the technology you will employ (GIS analyses, drone flights)?

- **Do you have a baseline report template?**
 - What gets included in the baseline? Does the template vary in any circumstances?
- **Do you have a management plan template?**
 - What gets included in the management plan? Does the template vary in any circumstances?
- **Have the templates been reviewed?**
 - Legal review? Planning review? Conservation review? Expert review?



Setting up the internal structures

- **Who is the program's 'sheepdog'?**
 - A person? A committee? Does a job/committee description reflect this? Do they have the authority they need?

- **What approvals are required within the municipality?**
 - Project initiation? Compensation? Sign off on agreement? Acceptability for inclusion in subdivision/plan?
- **Who is responsible for approving a conservation easement project?**
 - Designated committee? Advisory committee? Designated staff? Department manager? Council? Does it only need to satisfy plan parameters?
- **Who is responsible for conservation easement negotiation?**
 - One department/person? Multiple responsibilities (initial contact, negotiation, finalization, compensation)?
- **Who is responsible for on-going landowner communication?**
 - Ag fieldman? Area planner? Communications staff? Designated program staff? District councilor?
- **Who is responsible for monitoring the conservation easements?**
 - Designated staff person? Designated department? Third party (under supervision)?
- **Who is responsible for enforcement**
 - Joint responsibilities (initial notice of infringement, enforcement order). Ag services? Conservation? Planning? Legal? Protective services?
- **What documentation/records/data are required internally?**
 - Conservation easement agreements? Baseline reports? Management plans? GIS (spatial) data? Amendments to conservation easements? Data on contribution to conservation goals? Program summaries? Infractions of conservation easements?
- **Who is responsible for maintaining the records?**
 - Who maintains the database? (assessment, records, planning, geospatial) Who is required to contribute to the database? Who submits required notifications?

“Who is responsible for approving a conservation easement project?”

Creating communication procedures and materials

- **How do potential conservation easement grantors find out about the program?**
 - Web information? Printed materials? Proactively engage potential conservation easement grantors? Respond when approached?
- **How do community members find out about the program’s activities and success?**
 - On-going reporting to the community? Reporting to Council?

Creating

(creating the actual conservation easements)

Each conservation easement will look different based on the restrictions and negotiated clauses (let alone that each parcel and each landowner is different). In each case, though, drafting a particular conservation easement requires the municipality to ask the same questions.

The mechanics of creating a conservation easement divide into two steps:

- Drafting the conservation easement
- Enacting the conservation easement

Drafting the Conservation Easement

- **Are the landowner's goals in alignment with the municipality's?**
 - Environmental, scenic, agricultural? Aligned on key features to be conserved? Aligned views on future development, public access? Aligned on compensation? EcoGift certification? Conservation easement template an acceptable starting point for the landowner? Probable timeline acceptable to both parties?
- **What restrictions will be included in the conservation easement?**
 - Use template conservation easement restrictions? Variations? Additions? Monitoring these will be viable?
- **Have all legal claims to the land been confirmed?**
 - Landowner is legal owner? Other interests that need to be consulted? Mortgage postponement required? Dower affidavit required?
- **Is it clear what physical area will be subject to the conservation easement?**
 - Whole parcel? Portion of the parcel? Certain features? Reserved envelopes for future building? Survey needed?



- **Has the appraisal of the conservation easement been initiated?**
 - Qualified appraiser? Appraisal suitable for EcoGifts program?
- **Is the baseline document report being developed?**
 - Accurately reflect the agreed-upon conservation values? Aligned with monitoring template? Prior to or after conservation easement signing?
- **Has a management plan been drafted?**
 - Will conservation easement have a management plan? Based on template? Variations? Additions?
- **Has EcoGift certification been initiated (if appropriate)?**
 - Who will initiate certification? Regional coordinator contacted? Land eligible for certification?
- **Have the required internal municipal reviews of the agreement occurred/been initiated?**
 - Legal? Planning? Conservation?
- **Have the conservation easement drafting costs been allocated to the parties?**
 - Appraisal? Baseline? Management plan? Other?

Enacting the conservation Easement

- **Have the required notifications been made?**
 - Government of Alberta agencies (Minister of Municipal Affairs, Minister of Infrastructure, Minister of Transportation)? Others on title? Advance notice time requirements met?
- **Has the conservation easement been signed by both parties?**
- **Has agreed-upon compensation been provided?**
 - Tax receipt? Payment? Development consideration/approval? Landowner recognition?
- **Has the conservation easement been registered with registrar of the Land Titles Office?**
 - Mortgage postponement secured?



Stewarding

(ensuring conservation is perpetual)

Conservation easements do not have auto-pilots. The process of ensuring the conservation easement will maintain its effectiveness (generically referred to as 'stewardship') ultimately becomes the greater portion of the municipality's work related to conservation easements.

That process can be divided into three task areas:

- Monitoring the conservation easement
- Enforcing the agreement
- Reporting achievement

Structuring the stewardship process properly at the outset can greatly reduce both the amount of work and the unwanted surprises.

Monitoring the conservation easement

- **Is monitoring being done against the conservation easement documentation?**
 - Baseline report? Conservation easement restrictions? Management plan?
- **Does monitoring follow a set process?**
 - Monitoring template? Written protocols? Responsibilities? Frequency? Landowner notification?
- **How is landowner communication maintained?**
 - Regular communication with landowner? Landowner sign-off on monitoring reports? Mechanism for briefing new landowners?
- **How are monitoring records maintained?**
 - Central repository, archive? Digital? Paper?
- **Is there a process for identifying necessary amendments?**
 - How is agreement obtained? How are conservation implications identified? Who bears the financial cost of EcoGift penalties? Process for submitting amendments to Land Titles, EcoGifts?
- **Is a third-party involved in monitoring?**
 - Local ecological/agricultural conservation group? Local land trust?

“How is landowner communication maintained?”

Enforcing the agreement

- **How are landowners notified of infractions/infringements?**
 - Designated landowner contact? Differences based on hierarchy? Written? Verbal?
- **Is there an enforcement hierarchy?**
 - 1) Talk often, 2) bargain in good faith, 3) lastly the courts?
- **Who is the ultimate enforcement authority?**
 - Different ones based on hierarchy? Planning? Landowner contact? Protective/bylaw services? Legal?
- **How are infractions and enforcement recorded?**
 - With individual conservation easement records? Conservation easement database? Land/parcel records? Incident reports?

Reporting achievement

- **How is activity and success reported internally?**
 - Report against conservation goals? Department report? Data-based (spatial, statistical) report?
- **How is activity and success reported to the community?**
 - Dedicated communication materials? Web-based information? On a project basis? Annually?



Conclusion

Conservation easements are a potentially strong tool for municipalities to use to accomplish their conservation goals. They are, however, not a silver bullet, and great care should be taken by a municipality in the creation and maintenance of a conservation easement program.

The good news is that, if that care is taken, and the needs and perspective of the local landowner community are incorporated, a municipal conservation easement program can be efficient and effective.

The key is to understand what a conservation easement can and can't do for a municipality; think carefully through the policy, planning, financial and other special considerations for municipalities; and clearly articulate the policy framework, the drafting process, and the on-going stewardship plan.



Appendices

Appendix 1: Glossary

ALSA (Alberta Land Stewardship Act) – The enabling legislation for conservation easements in Alberta (s. 28-35).

Appraisal – When the financial value of a conservation easement is a factor in the negotiation, an ‘appraisal’ is carried out to determine that value. It is conducted by a qualified appraiser, and usual values the potential sale value with and without the easement, the difference being the value of the easement.

Baseline document report – A baseline report, baseline assessment, or baseline document report, is an inventory of the conservation value of the property when the conservation easement is first placed. All subsequent monitoring references that report.

Conservancy – A synonym for ‘land trust’

Ecological Gift (EcoGift) – The federal ‘Ecological Gifts’ program provides enhanced tax benefits and appraisal security for landowners donating a conservation easement that is certified as a gift of ecological property.

Enforcement – A key part of the conservation easement agreement is the rights of the qualified organization to enforce the easement; that is to apply any remedies under the agreement to ensure its terms are upheld.

Fee simple / full title – When a conservation organization purchases a property outright (rather than simply receiving a conservation easement) they are said to have made a ‘fee simple’ or ‘full title’ acquisition (NB: although ‘fee simple’ is an American term, it is in common usage in the land trust community).

Grant – When a landowner provides a conservation easement, they are said to have ‘granted’ it, and this generic term applies whether that grant was made through a sale, donation, will or any other form of disposition.

Grantor / Grantee – The ‘grantor’ of the conservation easement is the landowner, and the ‘grantee’ is the qualified organization receiving that easement. The Alberta Land Stewardship Act provides that these terms also apply to any future

“successor, assignee, executor, administrator, receiver, receiver manager, liquidator and trustee.”

Interest in land – When someone holds rights to a property that is owned by someone else, they are said to have an ‘interest in land.’ A conservation easement represents an interest in land held by a qualified organization with respect to a landowner’s property.

Landowner – In the case of a conservation easement, the landowner is the person who grants the easement to a qualified organization, and the person who continues to hold all ownership rights and opportunities that are not specifically granted away by the easement.

Land trust – A non-profit, charitable organization that holds lands, or interests in land (such as conservation easements) in trust for future generations, conserving their environmental and/or agricultural values.

Land use – The *Alberta Land Stewardship Act* (the enabling legislation for conservation easements) and the *Municipal Government Act* use the term ‘land use’ in slightly different ways; in this guide ‘land use’ is considered expansively – any active use to which people may put land (agriculture, residential development, forestry, roads, etc.)

Management plan – Because conservation easements can be ‘prescriptive’ (“you must”) as well as ‘restrictive’ (“you can’t”), a conservation easement agreement may include a management plan, which identifies certain land use and management practices which all future landowners must abide by.

Monitoring – The holder of the conservation easement conducts regular visits to the property to ensure the provisions of the agreement are being upheld. Monitoring assesses the condition and use of the property against the baseline document report, and typically happens annually.

Mortgage postponement – Encumbrances on the title of a property are registered in the order they are received, with the earlier ones generally having precedent over latter ones. Mortgage postponements are usually requested to put any prior mortgages ‘later in the line’ after conservation easements to ensure the easement can survive a foreclosure.

Notice – The Alberta Land Stewardship Act requires certain parties to be notified when a conservation easement is going to be registered. These include the municipality (or analogous authority in the case of Improvement Districts, Special Areas or Metis settlements), the Ministers of Infrastructure and Transportation.

Perpetuity – Conservation easements may have a set term, but are typically designated as being ‘in perpetuity’ – literally, ‘without end.’ This means there is no designated term,

Purpose – A conservation easement may only be granted for certain purposes under the Alberta Land Stewardship Act (ALSA, Sec 29(1)).

Qualified organization – Only certain entities are legally eligible to hold conservation easements (under the Alberta Land Stewardship Act). These include “a local government body”

Registration – A conservation easement gains its enduring conservation strength by being ‘registered’ on the title of the property, allowing it to run with the land regardless of ownership. This is done through the provincial land titles Registrar.

Restriction – The ‘backbone’ of a conservation easement is the set of restrictions on land use and practices, which are intended to maintain the identified conservation values of the property.

Split Receipt – A form of compensation for a landowner granting a conservation easement where they receive a combination of tax receipt and cash payment equaling the full financial value of the conservation easement.

Stewardship – A term with many definitions, but in the context of conservation easements, ‘stewardship’ refers to the monitoring and enforcement of the conservation easement after it is granted.

Tax receipt (or charitable tax receipt) – In the case of a conservation easement being granted freely and without consideration, a landowner may receive a tax receipt for the financial value of that donation. Municipalities are eligible to issue charitable tax receipts.

Term – ‘Term’ refers to the length of time for which the conservation easement will be in effect. The easement may be granted for only a specified amount of time, but most are granted in perpetuity.

Appendix 2: Fact Sheets

Four 'Fact Sheets' were created as stand-alone, summary resources for municipalities. These can all be found on the *Conservation Easement Guide for Municipalities* project page on the Community Conserve website (www.communityconserve.ca). The fact sheets included there are:

Fact Sheet #1

10 Things Municipalities Should Know About Conservation Easements

Fact Sheet #2

Comparison of Conservation Easements (CE), Environmental Reserves (ER), and Environmental Reserve Easements (ERE)

Fact Sheet #3

Conservation Easement Sequence of Events: Plan, Draft, Enact, Steward

Fact Sheet #4

Overview of a Municipality's Potential Costs Related to Conservation Easements

Appendix 3: Resources

The *Conservation Easement Guide for Municipalities* project page on the Community Conserve website (www.communityconserve.ca) contains links to the following resources.

(Note: Many of these resources are actually links to the bigger conservation easement resource, Conservation Easements in Alberta, available at www.ce-alberta.ca).

Conservation Easements Web Resources

- CE Alberta Comprehensive Web Resource
- Conservation Easement Registry
- Standards and Practices

Templates and Drafting Resources

- Common conservation easement provisions
- Common conservation easement agreement clauses
- Template baseline document report
- Conservation easement monitoring template
- Strathcona County monitoring template

Example Plans and Policies

- Examples – Conservation easements used by Alberta municipalities
- Examples - MDP Excerpts
- Examples - IDP Excerpts
- Examples - ASP Excerpts
- Examples - LUB Excerpts
- Examples - Conservation easement Bylaw
- Examples – Other policy excerpts

Provincial legislation

- Alberta Land Stewardship Act (ALSA)
- Conservation easements clauses *verbatim* and *simplified*

Support Organizations

- Miistakis Institute
- Environmental Law Centre
- Land trusts