

# **The Division of State Lands Conservation Easement Program**

---

March 2016

## The Division of State Lands Conservation Easement Program

In 1994, the Florida Game and Fresh Water Fish Commission (now the Florida Fish and Wildlife Conservation Commission) published a landmark report entitled *Closing the Gaps in Florida's Wildlife Habitat Conservation System*. The study attempted to determine how much habitat would be necessary to ensure the long-term survival of a group of endangered and threatened species in Florida, and it also recognized that the state could never purchase and manage all of the lands identified in their report that would be necessary to protect all of our native biota. However, because some wide-ranging species like the Florida Panther and the Florida Black Bear use rural agricultural lands in addition to intact natural habitat, the Commission proposed that many of these secondary habitat areas could be protected by conservation easements that would allow landowners to continue low-impact agricultural uses while simultaneously protecting habitat values for listed species and eliminating the need for the State of Florida to purchase the lands in fee-simple and subsequently having to manage the lands. The state could concentrate its fee-simple acquisitions on primary high-quality habitat.

Since publication of *Closing the Gaps*, the Florida Legislature began emphasizing the usefulness of conservation easements for protecting Florida's natural and cultural resources. Legislation establishing both the Preservation 2000 and Florida Forever programs included language encouraging the purchase of conservation easements in addition to fee-simple acquisition of conservation lands. Florida's Governor and Cabinet, sitting as the Board of Trustees of the Internal Improvement Trust Fund of Florida, oversee the acquisition and management of state-owned conservation lands, and have also endorsed the importance of conservation easements. The Acquisition and Restoration Council (ARC) and its predecessor, the Land Acquisition and Management Advisory Council, both created separate acquisition categories for conservation easements.

### What is a conservation easement?

A conservation easement, as defined in s. 704.06, Florida Statutes, is a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural or wooded condition. Conservation easements are meant to retain areas as suitable habitat for fish, plants or wildlife or to retain the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological or cultural significance. The purpose of a conservation easement is accomplished by restricting the amount of development allowed on a piece of property, limiting other land uses, and maintaining existing areas of conservation interest on a piece of property in their natural condition.

Many conservation easements are required as a part of the conditions of regulatory permits. Other conservation easements are held by non-profit land trusts, usually obtained by donation from landowners who benefit from various local, state and federal tax deductions. And in Florida, conservation easements can be purchased from landowners by state, water management district and local conservation land acquisition programs. This paper is concerned primarily with conservation easements purchased with Florida Forever funds in the statewide program administered by the Department of Environmental Protection's Division of

State Lands and overseen by the Acquisition and Restoration Council, although much of the information also pertains to other programs<sup>1</sup> that purchase easements.

Conservation easements are fundamentally different from conservation lands that the state owns fee-simple. First, the landowner retains title to the land and only gives up certain rights that he or she would otherwise have. Second, the landowner continues to manage the land subject to the restrictions contained in the easement. The public does not have access to easement properties except in limited circumstances, the public does not have access to easement property for recreational purposes; most landowners do not want interference from the public as they go about their daily business of raising cattle, conducting silvicultural operations or other activities allowed under the easement. In fact, in most cases landowners live on their property subject to an easement and wish their privacy to be respected.

### **How does the State of Florida decide when to purchase a conservation easement?**

Before the state can consider purchasing a conservation easement, the property must be included in a Florida Forever project boundary and ranked on a Florida Forever priority list approved by the Governor and Cabinet. The white paper [How Property Becomes a Florida Forever Project](#) provides a general overview of the application and review process for all Florida Forever proposals, but there are additional considerations for conservation easements.

Of primary concern when evaluating proposals for conservation easements, in addition to the general criteria used for all Florida Forever proposals, is whether the natural or cultural resources on the property can persist without active resource management. One often hears that landowners can manage their land better than state management agencies, but that is not true for all resources. If a property requires serious restoration, frequent prescribed fire, intensive control of invasive exotic plants or management specifically to perpetuate a certain listed species, then it is often better to purchase a property in fee-simple so the state can manage for those resources. On the other hand, if a property is managed for silvicultural resources, wetland protection, unimproved pasture for cattle, or for hunting, private landowners who have been doing this sort of work for generations are clearly capable of continuing to do it under a conservation easement. In general, if a property needs no form of management different from what is already occurring on a piece of property, then a conservation easement is most likely appropriate, especially if the property is contiguous to an existing conservation land and can serve as a buffer or is part of an ecological wildlife corridor connecting other conservation lands together.

### **Steps to Acquisition – Negotiating the Easement**

The most important step in acquiring a conservation easement on a piece of property is to develop an easement document that provides protection to the resources in which the state is interested while simultaneously allowing the landowners to continue to have flexibility in using their property. Every conservation easement negotiated by the Division of State Lands begins by asking the landowners what they are currently doing on the property and what plans they have for future activities on the property. The Division of State Lands' Bureau of Real Estate Services and Office of Environmental Services then begin with a conservation

---

<sup>1</sup> For example, the Department of Agriculture and Consumer Services acquires conservation easements on agricultural lands using Florida Forever funds under its Rural and Family Lands Protection Program: <http://www.freshfromflorida.com/Divisions-Offices/Florida-Forest-Service/Our-Forests/Land-Planning-and-Administration-Section/Rural-and-Family-Lands-Protection-Program2>. Florida's five water management districts also acquire conservation easements. See <http://www.dep.state.fl.us/secretary/watman/default.htm> for individual district websites.

easement template and add provisions for rights granted to the State of Florida, rights retained by the landowner, and prohibitions imposed on the landowner by the easement.

The conservation easement begins with a statement of the purposes of the easement. Then the landowner and acquisition agent negotiate the terms of the easement until both parties are satisfied with the final document. Conservation easements are intended to restrict the property in perpetuity, so all parties must be comfortable with the prohibitions and permissions contained in the document. If the state is not happy with the level of resource protection or the landowner is unhappy about what can be done on the property, the easement will not work. Conservation easements can be amended with agreement by both parties, but it is much better to have a document from the beginning that provides resource protection and enough flexibility for the landowner to continue to use the land in a manner that offers the protections being sought by the state.

### **Steps to Acquisition - Appraisal**

After both parties agree on the final easement document, the Division of State Lands' Bureau of Appraisal begins its process of determining the value of the property as restricted by the terms of the easement. An appraisal cannot be done until the final terms of the easement are known. Unlike appraisals for fee-simple acquisitions, conservation easements require a two-step appraisal process. The first step is identical to a normal fee-simple appraisal. The property is appraised for its highest and best use as determined by the local comprehensive plan, local zoning ordinances and current market conditions. The property is then appraised a second time with all the conditions of the easement taken into account.

For instance, if we have a 1,000-acre property that allows one home per ten acres, the property would be appraised as though 100 homes could be built on it. If the terms of the conservation easement restrict the number of residences to only two, the property would be appraised a second time as though that restriction were in place. The difference in the two appraisals would then be the appraised value of the conservation easement. In our example, the value of the easement would reflect the state's purchase of the development rights for 98 of the 100 residences allowed on the site. Of course, there are many other factors that go into the pre-easement and post-easement appraisals, but this simple example demonstrates the basic technique used for appraising property covered by easements.

After the appraisals are completed, the next acquisition steps are identical to those for fee-simple purchases. The Bureau of Land Acquisition and the landowner negotiate a purchase price based on the appraisals, a purchase contract that includes the final easement is written, and the proposed purchase with executed contract is placed on an agenda of the Governor and Cabinet for their approval.

### **Baseline documentation**

After a contract is approved by the Governor and Cabinet, there is an additional step for conservation easements that we do not see for fee-simple acquisitions. Before closing the purchase of a conservation easement, it is necessary to describe in detail the conditions of the property at the time of purchase. This information is included in a Baseline Documentation Report, or BDR. The BDR describes the condition and areal extent of natural vegetative communities on the site (e.g., flatwoods, cypress domes, sandhills), describes the location and extent of non-natural areas like improved or unimproved pasture, and documents all man-made improvements to the property (structures, roads, dikes, ditches, fences, etc.). The report includes maps, aerial photographs, photographs of improvements and representative natural

communities, descriptions of areas of infestation by invasive exotic plants and documented sightings of threatened and endangered species.

The BDR is very important for future monitoring and enforcement of easement conditions. If a conservation easement prohibits any destruction of wetlands, we need to know where wetlands occur at the time of the easement purchase. If it prohibits construction of new roads or ditches, we need to know where existing roads and ditches are located. We need to know where natural areas occur and which areas are currently used for agriculture or silviculture. A conservation easement usually requires that property be kept more or less in its condition at the time of purchase. The BDR provides a snapshot of the property so we can determine if and how the property changes over time.

Both the landowner and the state must agree that the BDR accurately reflects the condition of the property. The purchase of the easement can only take place after mutual agreement because the BDR is incorporated by reference as part of the easement. It becomes a permanent part of the conservation easement file and must be referred to whenever there is a question about activities occurring on the property after the easement is purchased.

### **Monitoring and Enforcement**

For fee-simple acquisitions, property is leased to a managing agency, the managing agency writes a management plan, and the Division of State Lands and the Acquisition and Restoration Council review the management plan and later conduct reviews to ensure that land managers are managing the land appropriately. The process is different for properties under conservation easements. Most importantly, the landowner is also the land manager. The state does not conduct management activities on the property. However, the state does not merely walk away and forget about the property.

Within 12 to 18 months after purchase of an easement, the Office of Environmental Services begins a program of site visits to the property to ensure that the landowner is complying with the negotiated terms of an easement. The State of Florida spends a lot of money to purchase conservation easements, which are essentially legal promises by landowners to conduct activities on their property in a manner that protects the conservation values identified by the Acquisition and Restoration Council. It is important for the public and lawmakers to be assured that they are receiving what taxpayers have paid for. The Office of Environmental Services monitors conservation easements every 36 months.

The site visits for the purpose of monitoring compliance with conservation easements actually serve several purposes. In addition to ensuring that easement conditions are met, the site visits provide an opportunity for landowners to discuss any problems they are having, to divulge plans for future activities on the site, to ask questions about whether a planned activity would be in compliance with the easement and generally to encourage an exchange of ideas about land management.

One very important outcome of monitoring site visits has been to make landowners aware of the presence of invasive exotic plants on their properties. Our monitors have done an excellent job of teaching landowners how to identify invasive exotic plants, and our landowners have taken this knowledge and initiated serious and effective eradication programs on their properties. The Division of State Lands works closely with the invasive plant program of the Florida Fish and Wildlife Conservation Commission and has coordinated with The Nature Conservancy for invasive plant eradication programs in Central Florida.

If violations of conservation easement provisions are discovered during monitoring site visits, the landowners are informed and requested to repair any damage to natural areas. If landowners do not restore their property to a proper condition, the state has a right to seek injunctive relief through the courts. So far we have found only one violation that could be considered a major one, and the landowner quickly restored the property. We have maintained a healthy and friendly relationship with all landowners and have had no need for legal action.

### **Conservation Easement Reports**

The Office of Environmental Services prepares an annual report to the Acquisition and Restoration Council on the status of conservation easements. The report summarizes the number of easements overseen by the Office of Environmental Services, total cost, the number that have been monitored in the past year along with the cost, and any problems or successes that have been noticed. OES submits the reports to the Acquisition and Restoration Council in October of each year. The Florida Natural Areas Inventory (FNAI), a component of Florida State University's Florida Resources and Environmental Analysis Center, also maintains information on non-regulatory conservation easements acquired by the state, water management districts, federal government, and many non-profit conservation organizations. FNAI information, including interactive maps of where easements are located, can be accessed at [www.fnai.org](http://www.fnai.org).