

Co-holding Conservation Easements

A co-held easement is an easement whose rights, duties and responsibilities are shared by two grantees. Often one of the grantees (informally or formally) takes primary responsibility for the easement, and the other acts as a backup, providing resources when necessary. Both grantees have equal legal standing and responsibility to enforce the easement. Because co-holders are legally equal partners, conflicts can occur when they disagree about enforcement issues or expenses—the co-holding relationship must be carefully negotiated so each entity is clear on its responsibilities.

Granting an additional qualified holder a shared interest in a conservation easement can ensure a property's long-term preservation. As such, many entities, particularly those with new or relatively small easement programs, partner with larger organizations or agencies to share responsibilities for their easements. In co-holding situations, particularly between state agencies and local land trusts, the local group often takes primary responsibility for stewardship.

Although co-holding easements is a common practice and is required by some grant-making agencies, land trusts and agencies should deliberate this approach carefully. Any requirements or limitations of state law also need to be considered. Co-holding requires careful coordination and agreement between the two parties, and some duplication of effort is unavoidable. Because of these limitations, some organizations feel that a third-party right of enforcement or executory interest is a better option for backup protection.

Benefits of Co-holding

Co-holding partnerships offer many of the same benefits to easement projects as other types of backup arrangements. In addition to the added protection, legal and financial backing, and possible protection from condemnation that another holder brings, agencies and organizations experienced in co-holding arrangements find that there are other advantages to structuring easement transactions in this way.

- ❖ **Shared stewardship:** Two holders can improve easement stewardship because both organizations are typically involved in monitoring. The local land trust can be the “eyes and ears,” more directly accessible to the landowner, and the larger organization can provide any necessary staff support.
- ❖ **Uniform standards:** If a state agency co-holder has an established, effective easement program, having this agency as a partner can help ensure that the easement, as well as stewardship practices, meets minimum standards that are consistent across a wide area of operation.
- ❖ **Additional expertise:** Having two holders can broaden the expertise available for the easement project and provide different perspectives. With co-holding, both holders are usually involved in the project from the beginning and can share expertise in structuring the project and drafting the easement.

- ❖ **Meeting the conservation purposes test:** An easement co-held by a public agency may help the easement meet the “governmental policy” component of the conservation purposes test for income tax purposes under the federal easement rules (see Treas. Reg. §1.170A-14[d][4][iii][B]).

Though there are many benefits to co-holding easements with other organizations, some land trusts prefer to use the “third party” approach instead, authorizing intervention by another entity only in exigent circumstances. Co-holding can be risky because unless appropriate safeguards are adopted by both organizations, it's easy to confuse roles, let tasks slip, disagree, or, worse, have one of the co-holders grant an inappropriate approval (verbal or written) that would be binding on both parties.

Co-holding Agreements

In addition to the roles and responsibilities specified in the easement document, co-holding organizations usually have a separate written cooperative agreement that describes how they will work together. This agreement outlines how all aspects of the project will be handled: landowner outreach, drafting the easement, managing the acquisition, paying for project costs, baseline documentation preparation, raising and managing stewardship and enforcement funds, responding to notices and requests for approval or amendment, monitoring, and enforcement. As the relationship between the co-holders changes over time, this agreement should be updated.

Other LTAnet Resources (available to volunteers and staff of LTA Member land trusts and Partner organizations):

- ❖ **2005 Rally Workshop E16: “Co-Holding: How, When and Why”**
[http://www.ltanet.org/objects/view.acs?object_id=17544] presented by Catherine Scott; Robert G. Lee; Nick Williams; and Sandra Edwards
- ❖ **“The Maryland Experience: Private Local Land Trusts Co-Holding Conservation Easements with a Public Agency,”** *Exchange* Fall 1999
[http://www.ltanet.org/objects/view.acs?object_id=392] by Nick Williams and John Bernstein