

Costs of Due Diligence in Conservation Acquisitions

To responsibly accomplish a conservation easement or land acquisition, due diligence is necessary. This guide describes the costs incurred by land trusts and agricultural land preservation boards in completing surveys, baseline documentation, appraisals, title search and insurance, phase 1 environmental assessments and legal services in support of conservation acquisitions.

Last updated: July 11, 2011

Summary	2
Introduction	2
Survey	2
Survey Costs and Variables	2
When New Surveys are Required	3
Pennsylvania Conservation and Preservation Easements Act	3
Paying for Surveys.....	4
Appraisals	4
Baseline Documentation	4
Baseline Documentation Costs	4
Who Conducts the Baseline Documentation?.....	4
Phase One Environmental Assessments	5
Title Search	5
Title Insurance	5
Title Insurance Costs.....	5
When is Title Insurance Required?.....	5
Settlement Costs	6
Legal Fees	6
Agricultural Preservation Board Total Costs	6
Library	7

Related Library Categories at ConservationTools.org.....	7
Featured Library Items at ConservationTools.org.....	7
Expert	7
Related Guides	7
Disclaimer	7
Acknowledgements	7

Summary

This guide describes the range of costs incurred by land trusts and agricultural land preservation boards in completing due diligence for conservation easement acquisition. It reports costs for surveys, baseline data, appraisals, title search, phase 1 environmental assessments, and legal fees. The presented information is based on a 2011 survey of land trusts and agricultural land preservation boards and a review of land trust grant applications. Although the data was gathered in the context of conservation easement projects, much of the information is relevant to fee acquisition of land.

Introduction

The Pennsylvania Land Trust Association researched the costs of due diligence steps in acquiring a conservation easement:

- survey
- baseline data
- appraisals
- title search
- phase 1 environmental assessments
- legal fees.

Data was collected in two ways: direct survey of conservation easement holders and analysis of grant applications. One hundred land trusts and county agricultural land preservation boards were surveyed via phone and email in 2011. Responses were received from 70. Information was also obtained from the Conservation Easement Assistance Program (<http://conserveland.org/ceap>) applications of 26 land trusts. In these applications, land trusts report to the Pennsylvania Land Trust Association the actual costs of each due diligence step they undertake to acquire a new conservation easement.

Survey

Survey Costs and Variables

Land trusts and agricultural land preservation boards reported that survey costs could vary greatly from easement to easement. Variations in the size of the property, the exclusion of portions of the property from the easement, the number of minimal and

highest protection areas and the time of year (especially for farmland, where the presence of tall crops can make the survey more difficult) are the factors the land trusts and preservation boards cited that cause the variation in survey price.

Many organizations were uncomfortable reporting an average survey cost due to the inherent variations and instead reported a range of costs. The range of costs provided by all these organizations was \$500 to \$80,000. The average low cost was \$3,488 and the average high cost was \$15,665. For those land trusts and agricultural land preservation boards comfortable with reporting an average survey cost, the average cost was \$4,362. The reported average costs ranged from \$1,250 to \$10,000. One agricultural land preservation board reported average costs of \$35-\$40 an acre.

When New Surveys are Required

Thirty-nine percent of land trusts always require a new survey. Forty-four percent sometimes require one and 17% do not require new surveys.

For land trusts that sometimes require a new survey, the availability and the source of funding for the easement are often the determining factors in whether or not a new survey will be done. Funders often require a survey, and often offer the funds to pay for it. Land trusts cited insufficient funds as a common reason to not always require a survey.

Additional reasons cited to complete one were significant exclusions of land from the easement, title discrepancies or potential trespass issues. Five land trusts stated that they complete a survey when staff determine the most current survey is insufficient.

Agricultural land preservation boards are required by the state to have a survey with a legal description that does not contain a closure error greater than 1 foot per 200 linear feet. However, boards are allowed to go above and beyond this requirement, and 40% stated that they always require a new survey, regardless of whether a current survey that meets the closure rules exists. Seventeen percent stated they would go beyond the state closure rules for a property-specific reason, mainly if a landowner requests to exclude property from the easement. Of the remaining boards, one stated that they always require a survey, but might use the state closure rules to save money, and one always requires a survey unless a recent one exists that meets the state rules.

Pennsylvania Conservation and Preservation Easements Act

The [Pennsylvania Conservation and Preservation Easements Act](#) has bearing on whether a survey will be necessary for an easement project. The Act imposes a higher if less than the entire property described in the deed is to be subject to the easement. Section 4(b) of the Conservation Easements Act provides as follows:

[A] conservation easement may encompass an entire fee simple interest in a parcel of real property as described in the deed to the property, or any portion thereof or estate therein. Except when referencing an easement's boundary using setback descriptions from existing deed boundaries or natural or artificial features, such as streams, rivers or railroad rights-of-way, a metes and bounds description of the portion of property subject to the easement shall be provided in the easement document.

Paying for Surveys

Thirty percent of land trusts pay for surveys themselves and 15% require landowners to pay for them. Fifty-five percent of land trusts use a mix of land trust funds and funds from landowners. Amongst all the land trusts, 35% stated they ideally use grants that are specifically for the easement to pay for the survey (as opposed to grants that would fund a variety of land trust operations).

All but two agricultural land preservation boards use state funds to pay for surveys. Those two require landowners to pay for them. Of the boards that use state funds to pay for surveys, two require landowners to pay if the landowners want to exclude part of their land from the easement.

Appraisals

Land trusts and agricultural land preservation boards were generally more comfortable reporting an average appraisal cost, as these costs do not vary between easements as much as survey costs do. Several organizations contract with a specific appraiser, and pay the same rate for each easement. On average, appraisals cost \$1,729. The highest average appraisal cost reported was \$3,000, the lowest was \$1,000.

Three land trusts reported a range of costs for appraisals. The range of costs provided by these land trusts was \$1,000 to \$6,500. The average low cost was \$2,167 and the average high cost was \$4,333.

Baseline Documentation

Baseline Documentation Costs

Land trusts reported an average baseline documentation cost of \$2,436, with the highest average cost reported being \$6,000 and the lowest \$300. Only one land trust reported a range of costs for baseline documentation: “\$5-7,000 to up to double that”. Several land trusts used internal staff to complete the baseline documentation and were therefore unable to report a cost for this step. Amongst these land trusts, one reported that it takes about 30 hours of staff time to complete one baseline report, including on-site visits, records research, and report preparation. This land trust occasionally uses outside experts (e.g., botanist, historian, naturalist, etc.) to supplement the work of staff.

Agricultural land preservation boards generally reported not being familiar with the baseline documentation process. Some boards reported informally doing some baseline documentation work. They used county staff to complete the work and did not record the staff costs for each easement.

Who Conducts the Baseline Documentation?

Half of the land trusts reported that staff are responsible for completing the baseline documentation and about another quarter have staff work with consultants to supplement where there is a lack of staff knowledge, or, in the case of one land trust, when there is

not enough staff time. Two reported relying solely on consultants for the work. The rest use a combination of staff, consultants and volunteers.

Phase One Environmental Assessments

Land trusts reported an average phase one environmental assessment cost of \$1,781, with the highest average cost reported being \$2,000, and the lowest \$1,500. No agricultural land preservation boards reported conducting phase one environmental assessments.

When asked if they always perform a phase one environmental assessment for their conservation easements, 24% of land trusts stated they require them for all easements.

Title Search

Organizations reported an average cost to complete a title search of \$224. The highest average cost reported was \$499 and the lowest was \$100. No organizations reported a range of costs. Many organizations were not able to report title search costs because they paid one fee for title insurance, title search and settlement expenses and were not able to separate that number into separate cost categories.

The majority of organizations (85%) use either a title search company or an attorney who works with a title search company to complete the search. One land trust relies on the volunteer services of a board member for title searches. The remaining organizations complete their title searches using both staff and title search companies.

Title Insurance

Title Insurance Costs

In Pennsylvania, title insurance costs are determined according to standard rates, up to an insured value of \$30 million. After \$30 million, the rate can be negotiated. Title insurance rates can be found at the Title Insurance Rating Bureau of Pennsylvania's web page, <http://www.patitleratingbureau.org/rates-and-charges/schedule-of-rates>.

If the easement is purchased in a bargain sale, the land trust has two options for how to obtain insurance. Title insurance can be obtained for the purchase price of the easement or insurance can be purchased for the full value of the easement. In the case of a donation, title insurance could also be purchased at the appraised value. In cases where no appraisal is done, one land trust reported assigning a reasonable value to the easement. The reasonable value can be determined by researching other transactions and making an educated estimate of the value of the easement. Another land trust cautioned against this approach and makes it the practice to always have a certified appraisal done.

When is Title Insurance Required?

Organizations were asked whether they always, sometimes or never obtain title insurance. Agricultural land preservation boards always require title insurance (as per

state rules). Fifty-eight percent of land trusts always require title insurance, 17% never require it, and the remaining 25% sometimes do.

Settlement Costs

Organizations reported average settlement costs of \$125, with the highest average cost reported being \$200, and the lowest \$50. Many organizations were not able to report title search costs because they paid one fee for title insurance, title search and settlement expenses and were not able to separate that number into separate cost categories.

Legal Fees

Legal fees vary greatly depending on the complexity of the project, region, and the attorney. Some law firms or lawyers will charge land trusts a discounted hourly rate or provide their services *pro bono*. Also factoring in are the personal styles of the landowner and landowner's counsels.

Land trusts and agricultural land preservation boards reported average legal costs of \$1,852. Legal costs ranged from \$50 to \$10,901 with a median cost of \$1,308. (This does not factor in those receiving their legal services entirely *pro bono*, which would mean \$0 in legal costs). Organizations with lawyers on staff were not able to report a cost for legal services as staff time invested for each easement was not recorded.

Organizations reported a variety of fee structures for legal services. Fifteen percent have staff attorneys. Of those who use an independent attorney, 27.3% pay a standard rate, 21.2% received a discounted rate, 21.2% received *pro bono* services, and 15.2% have a mix of standard rate, discounted rate and *pro bono* services.

Agricultural Preservation Board Total Costs

Each agricultural land preservation board is required to report due diligence costs to the Pennsylvania Department of Agriculture. These costs include appraisal, survey; legal fees for title search, preparation of documents and attendance at the closing; recording fees, and the costs of providing adjoining landowners with required notices. (The preservation boards are required to notify the owners of land adjoining a farmland tract to which an easement purchase is proposed with notice of the proposed purchase and notice of an opportunity to be heard at the State Board meeting at which the easement purchase recommendation is to be considered. This may be done by certified mail or personal delivery of the notification.)

Between 1989 and 2011, completion of all due diligence steps cost boards an average of \$6,400 per easement. The Department of Agriculture was not able to provide a further breakdown of these costs.

Library

Related Library Categories at ConservationTools.org

[Conservation Easement Implementation Guides](#)

Featured Library Items at ConservationTools.org

[Land Trust Standards & Practices](#)

Expert

Verlin S. Renner, Jr.

Verlin joined the staff of the Berks County Conservancy in 2002 as Director of Real Estate. He has 35 years experience in managing real estate in the private sector.

Related Guides

[Conservation Easement](#)

[Calculating Conservation Easement Stewardship Costs](#)

[Riparian Buffer Protection Agreement](#)

Disclaimer

Nothing contained in this or any other document available at ConserveLand.org or ConservationTools.org is intended to be relied upon as legal advice. The authors disclaim any attorney-client relationship with anyone to whom this document is furnished. Nothing contained in this document is intended to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to any person any transaction or matter addressed in this document.

Acknowledgements

The Pennsylvania Land Trust Association prepared this guide with support from the Growing Greener Programs of the Pennsylvania Department of Environmental Protection and the Pennsylvania Department of Conservation and Natural Resources, Bureau of Recreation and Conservation, as well as the William Penn Foundation.

© 2011 Pennsylvania Land Trust Association

Text may be excerpted and reproduced with acknowledgement of [ConservationTools.org](#) and the Pennsylvania Land Trust Association.