



THE LOUISVILLE/JEFFERSON COUNTY ENVIRONMENTAL TRUST
Policies for Considering Donations of
Conservation Easements and Land

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PURPOSE

The purpose of this document is to define the policies of the Louisville/Jefferson County Environmental Trust ("Trust") for considering offers of conservation easements and land. It is intended to aid potential donors of partial or full interests in conservation lands in selecting an appropriate organization for their gift and to establish a set of guidelines for the staff and the Trust's Oversight Board. This statement is intended to guide rather than limit the actions of the Trust. Easement donations and lands offered to the Trust will continue to be evaluated on a case by case basis. This policy statement should be used in conjunction with the Trust's informational materials, which outline the specific provisions of the typical conservation easement in greater detail. These materials are available from the Trust's office.

POLICY

A. The Role of the Trust.

The Trust has a dual role in considering offers of conservation easements and land in Jefferson County, Kentucky. First, it refers potential donors to appropriate recipients, including other conservation organizations and units of government, where the best interests of the environment so require. Second, the Trust reviews and recommends acceptance of offers of conservation easements and land to the Legislative Council of the Louisville/Jefferson County Metro Government ("Metro Council") subject to the policies enunciated below.

B. Cooperation with Other Organizations.

Because the principal goal of the Trust is to preserve open space, it is the Trust's policy to cooperate in every possible way with other organizations whose purposes and goals are similar. The Trust, within its capabilities, will lend assistance to other conservation groups and agencies, and will refer potential donors to other conservation organizations or government units as requested. The Trust will publicize its program.

The Trust staff will be informed about land protection and land acquisition programs of government agencies, private conservation groups, and other easement-holding organizations such as Louisville Metro Division of Planning and Design Services, Louisville Metro Department of Public Works and Assets, Louisville Metro Department of Economic Development, Louisville Metro Department of Parks and Recreation Metropolitan Sewer District, and private land trusts.

The Trust accepts most of its conservation easement and land by gift. As much as possible, the Trust's programs will complement other land protection programs. Routinely, if historically or architecturally important structures are located on properties for which the Trust is preparing a conservation easement, the Trust will inform the Louisville Metro Division of Planning and Design Services or the Department of Economic Development so that a preservation easement can be considered.

C. Legal Authority

The Kentucky Revised Statutes 382.800 through 382.860 permit the use of easements for conservation purposes, and Kentucky Revised Statutes Chapter 67 authorizes conveyance of real property to the Metro Council. Chapter 158 of the Louisville/Jefferson County Metro Code of Ordinances authorizes the Louisville/Jefferson County Environmental Trust to make recommendations to the Metro Council about acceptance of any real property interest related to conservation of lands, properties and scenic resources. The Trust is authorized as a program of Metro government devoted to the development, execution and promotion of voluntary conservation and preservation strategies for the purpose of enhancing Louisville Metro's ability to implement the open space and cultural heritage goals and objectives of the Comprehensive Plan of Louisville and Jefferson County.

D. Method and Process of Application

Recommendation of acceptance of a conservation easement or land by the Trust must be preceded by thorough staff work and investigation. The Oversight Board reviews each offer and recommends acceptance or denial of easements by the Metro Council. The Metro Council accepts or denies the offer of an easement. Generally, six or more months are required for processing easement offers from the first time of contact with the Trust's offices. The easement is then recorded with the Office of the County Clerk. Easements are also accepted by the Trust jointly with other agencies or land trusts as co-holders.

E. Responsibilities of the Trust as Easement Holder

Recommendations for accepting any easement or land are given at the discretion of the Oversight Board. It is the responsibility of the Oversight Board to recommend that any offer that is not in the best interests of the public is not accepted.

In acceptance of an easement, the Trust does not undertake any affirmative management duties other than the monitoring of the enforcement of the terms, conditions and restrictions of the easement as holder. The Trust assumes no legal liability or responsibility for management or maintenance of the property including any discharge of hazardous material affecting the property.

The Trust will, after notifying the owners, periodically inspect properties subject to accepted easements in order to guarantee adherence to the easement terms.

Although monitoring easement terms is the ultimate responsibility of the Trust, the Trust may delegate monitoring of such terms to appropriate individuals, co-holders, or other organizations. In each case, the Trust must be satisfied that it can guarantee compliance with the easement terms. Factors relevant to this determination include the location and accessibility of the land, the size of the tract, the type of land, and the availability of monitoring assistance from private conservation organizations or other government agencies.

The Trust will have the right and obligation to recommend enforcement of all terms of the easement agreement, as described in the standard easement.

F. Obligations of the Donor

The donor, or his or her successors in interest, retains all affirmative management responsibilities, including maintenance, the construction of improvements if permitted by the terms of the easement, the payment of real estate taxes (except where a property tax credit is applied for and granted) and other legal responsibilities of property ownership. For example, all normal functions and obligations of property ownership continue to be performed by the property owner, such as the pruning of trees, the removal of illegally dumped trash and the carrying of liability insurance. In addition, the property owner must abide by the specific terms of the easement, and allow periodic access to the property, after prior notice by Trust representatives, for monitoring purposes.

Except where an easement deed affirmatively provides to the contrary, or where interiors of historic structures are protected by the easement, the right of public access to the property remains the option of the owner.

The Trust will be responsible for seeing that the deed is properly recorded with the Office of the County Clerk and will pay all local charges for the recordation of deeds of easement.

In the event public access is required as a provision of the easement, the easement deed shall indemnify and hold the Trust and the Metro Council harmless from any legal liability related to public access.

G. Duration of Easement

Only perpetual easements are accepted by the Trust, except in unusual circumstances. Perpetual easements afford greater protection to the land than those that expire after a period of years. Term easements will be accepted by the Trust only where significant conservation values of a property may be threatened only during the limited term of the easement.

H. Lands That May be Subject to a Conservation Easement

State and federal laws generally limit the types of land that meet the conservation purposes of the Trust's easement program and the types of land for which conservation easement donations will qualify for various tax incentives. The Trust will evaluate each offer of an easement or land donation individually to ensure that the donation will serve a valid public purpose.

1. General Categories of Land which Meet the Trust's Conservation Purposes

Offers of land and easements will generally be considered on lands that will, through their preservation, yield a significant public benefit, including but not limited to lands which meet one or more of the following conservation purposes:

- a. The protection of relatively natural habitats of fish, wildlife, or plants, or similar ecosystems;
- b. The preservation of certain open space, including farmland or forestland, for the scenic enjoyment of the general public;
- c. The preservation of historically important land areas or certified historic structures or districts;
- d. The preservation of land areas for outdoor recreation by, or the education of, the general public.

2. Parks and Greenways Open Space Goals

Offers of land and easements will generally be considered where the protection offered by a conservation easement will be consistent with and help to achieve the adopted Comprehensive Plan Goals and Objectives of Louisville and Jefferson County. A list of the adopted Goals and Objectives are in Appendix A of this document, and include the following:

- a. Enhance the quality of life in Louisville Metro by affirming and protecting the economic value of neighborhoods and natural resources.
- b. Protect, to the extent possible, wildlife sanctuaries, wetlands, major forested areas, nature preserves, publicly owned parks, unique natural areas or other areas with significant landscape features.
- c. Encourage the preservation of significant farmland through public acquisition or voluntary land protection strategies for landowners.
- d. Support landowners who wish to maintain or establish agricultural operations in Louisville and Jefferson County.
- e. Form a network of open spaces and greenway corridors which protect significant natural resources.
- f. Promote a parks and open space system which preserves and enhances visual quality, protects historic and architectural resources, provides for education, and accommodates agricultural and forest resources.
- g. Protect and provide public access to scenic resources.
- h. Provide, through a system of stream corridor/greenways, diverse, universally accessible recreational opportunities for citizens to maintain a fit and healthy lifestyle.
- i. Safeguard the historical, cultural and archaeological resources (districts, sites, buildings, structures and objects) that are significant to the region.

3. Types of Lands Preferred by the Trust

Within the general categories of land that will be considered for donations above, the Trust will give preference to donations offered on lands identified by the following characteristics:

- a. Lands that are currently or potentially productive farmland, significant woodlands (especially large unfragmented forest), wetlands or wildlife habitat, lands rich in biological diversity, functioning ecosystems, or other particularly environmentally or scenically significant properties;
- b. Lands contiguous to other open space property protected, either by fee ownership or easement, by a federal, state or local government body or land conservation, agricultural protection or historic preservation organization; or

- c. Lands that, through their protection, could encourage compact development and contribute to greenway networks, other open space corridors or clusters, or ecosystem linkages.
- d. Lands on which historically or culturally significant properties are located.
- e. Lands that have been identified as having potential for future parkland or greenways.

4. Examples of Special Conservation Values for Easement Acceptance:

Such examples include:

- a. Lands in the Floyds Fork Corridor, Ohio River Corridor, or the Jefferson Memorial Forest target acquisition area.
- b. Lands adjacent to or within the viewshed of park land, scenic roads and/or highways.
- c. Lands adjacent to or occupied by endangered, threatened or rare species or their habitat as identified by the Kentucky State Nature Preserves Commission or the Kentucky Department of Fish and Wildlife.
- d. Lands adjacent to existing easements, including those held by the other qualified conservation organizations; public parklands or natural area preserves, or that are located within National Register Districts.
- e. Important historical or archaeological sites, in addition to those listed on the National Register of Historic Places.
- f. Lands sought for future open space, natural area protection or enhancement, or other valid public conservation purposes, but for which public acquisition funds and procedures have not been available or completed.

I. Size of Properties

The Trust generally prefers donations of land or easements consisting of at least 25 acres. However, the Trust may consider accepting a donation of less than 25 acres if one or more of the following criteria are met:

- 1. The property is adjacent to or contiguous with existing properties protected by fee or easement ownership, is or has the potential to be linked or closely clustered with other such parcels, or the prospective donor has the ability to enlarge the size of the easement area through acquisition, encouragement of neighbor donations, or other means.
- 2. The donation would protect special resources such as endangered or threatened species habitat, historic or archaeological resources, wetlands or riparian buffer.
- 3. There is an imminent threat to the conservation values of the property if the easement or land is not accepted.
- 4. There is substantial public support for the proposed easement or land donation.
- 5. A local land trust or other organization can assume much of the processing, documentation and monitoring responsibilities for the easement or land.
- 6. There are no available protection alternatives, such as an easement to a local land trust or other agency.

J. Offers of Easements not in Jefferson County

The Trust will primarily consider offers of land or easements located in Jefferson County. In some circumstances, the Trust may consider offers if the subject land is located in one of the counties contiguous to Jefferson or the Louisville metropolitan region and if the conservation value of the property meets the Trust's

criteria. The Trust will ensure that any recommendation for acceptance is consistent with the government policies of and approved by the legislative bodies of both Jefferson and the other county. When possible, the Trust will assist other counties in establishing their own easement programs or identifying a local land trust or organization that can hold land or easements outside Jefferson County.

K. Density of Development on Easement Property

It is the Trust's policy to accept easements that extract substantially all of the future development rights or potential from the land. However, in certain cases additional residences may be permitted on the property, where its conservation values would not be adversely affected and the economic viability of the restricted property would be enhanced. In the event of a conflict between economic viability and the conservation values of a property regarding the issue of permitted density, the Trust will give primary consideration to conservation values.

Additional development will be considered only when it does not change substantially the existing open space character of the property. The Trust will assess the impact of the proposed density of residences, appurtenant structures and other uses on proposed easement properties on the conservation purposes of the easement. In general, the Trust prefers to maintain the density of existing and proposed structures on easement property substantially below that allowed for similar property under existing local comprehensive plans or zoning ordinances. Factors that will be considered by the Trust in making determinations of allowable increased density on proposed easement property include:

1. Density allowed by the comprehensive plan and zoning ordinance, and existing density of the surrounding area;
2. Rate of land conversion in the area from conservation or open space uses to residential or commercial uses (i.e., degree and timing of development)
3. Number, size and location of existing structures on the property, and how these structures contributed to the conservation purposes of the easement (e.g. historic character, agricultural production)
4. Topography and visual features of the property and the compatibility of proposed new structures with these features
5. Potential impacts of proposed new structures on vegetation, water quality, wildlife habitat, and other conservation values of the property;
6. Plans for clustering or grouping of existing and additional structures to minimize impacts on conservation values;
7. Effect of additional structures or uses on the long term economic viability of the property under the restrictions of the perpetual easement; and
8. Whether the overall density of residences permitted on the property is made up of residences existing prior to the date of the easement, in proposed conversions of non-residential buildings to residential use (e.g. "mother-in-law" apartments), or will exist through reserved new construction.

In general, the Trust will seek to restrict additional residences, subdivisions of the property, and the lot size of new subdivisions, when permitted, to require clustering of additional residences near existing residences, and will encourage a maximum amount of undeveloped, undivided land. The Trust may also require its prior written approval for the location of additional residences or limit the location of the residences to sites or areas specified in the easement deed, and for any off-conveyances of subdivided lots.

L. Subdivision of Principal Residences Limited to Minimum Lot Size to Promote Clustering

As a matter of general practice, when an easement property contains, or the landowner reserves, more than one residence intended by the donors to be a principal residence, the second principal residence (or each additional principal residence) may be subdivided to the minimum lot size allowed by zoning at the time of subdivision. Other subdivision will be prohibited. The Trust may, however, approve the division of the property for reasons, determined by the Trust to be sufficiently extraordinary to justify an exception to the prohibition. Other approaches will be considered when property configuration, topography, or circumstances on adjacent properties warrant.

M. Tenant, Guest or Other Accessory Residences Not to be Subdivided

The Trust will generally require tenant houses or other accessory structures to remain on the same lot as the primary dwelling where such structures exist at the time of land or easement donation or where such structures are reserved through the terms of the easement. Such structures, generally, may not be expanded and can only be replaced with a similar structure with the same footprint as the original. Appurtenant structures associated with the tenant house are prohibited.

N. Easements on Land Protected by Other Easements or Deed Restrictions

The Trust will consider accepting easements on land subject to existing easements held, publicly or by private land trusts only in limited circumstances where the conservation values of the property are significantly better protected with an overlay conservation easement. Such additional protection may be achieved where an overlay easement would allow for the extinguishment of residential lots allowed for family conveyance, limits on the size and location of permitted agricultural structures that could otherwise harm the conservation values of the property, the addition of conservation measures for historic or archaeological sites, or additional protection for endangered or threatened species, mature trees, or stream vegetative buffers. The Trust prefers to combine its conservation easement protection with the protection offered by other easement programs on separate or adjacent parts of the property, rather than in addition to existing easements on a property.

O. Conservation Easements Offered to Protect Environmental Mitigation Sites

The Trust will cooperate with federal, state and local agencies seeking to enhance and permanently protect environmentally sensitive areas (e.g. wetlands, reforestation, afforestation, wildlife corridors, etc.) as mitigation for the loss of environmental areas caused by development. The Trust will review offers of conservation easements for mitigation purposes if the easement meets the Trust's usual criteria, and also taking into account the following:

- (1) Whether the mitigation fully meets the requirements of federal and state laws and policies for successful mitigation;
- (2) Whether the regulatory agency, property owner or private land manager has the capability to effectively monitor the mitigation site and ensure the maintenance of conservation values;
- (3) Whether sufficient financial support is provided to the Trust, and other monitoring officials, to carry out monitoring responsibilities;
- (4) Whether alternatives to the environmental impacts that are to be mitigated have been sufficiently explored; and
- (5) Whether the Trust's acceptance of the conservation easement on the proposed mitigation site will enable undesirable development projects to be approved that would otherwise not be permitted.

P. Regulatory Easements

The Trust may accept “regulatory easements” or “developer easements” e.g., easements pursuant to cluster ordinances or other regulations and statutes where the easement is granted as a *quid pro quo* for accompanying development. The Trust may accept such easements, if they meet the Trust’s usual guidelines.

The Trust supports the use of such easements as a tool for effective growth management, protection of greenways and linked clusters and corridors of sensitive areas, and compact rather than sprawling development. The Trust actively will assist in training interested local land trusts, counties and other organizations in encouraging such easements for such purposes.

In those cases where the Trust accepts regulatory easements, the Trust generally will not consider or process offers of easement donations on the subject property until all government approvals necessary to carry out development plans are approved and until all litigation over such approvals has been settled.

Prospective donors of easements for such property are not authorized to promise the donation of easements to the Trust as a means of obtaining approval for development projects, and are requested to refrain from making any representations of Trust interest in such donations. Any representation of Trust interest in the property made by applicants that do not follow this guideline will jeopardize the Trust’s consideration or acceptance of any easement on the property.

In those cases where the Trust considers regulatory easements and a public agency is seeking the Trust’s assistance in providing permanent protection for open spaces or natural areas as part of planned development proposals, the Trust will work with the agencies and project sponsors to establish the maximum practical amount of permanent environmental protection with the use of the Trust’s conservation easement program consistent with these policies.

Negotiations for such easements shall be initiated by the government agency, and shall not be used to provide a rationale or basis for development project approval where such approval would not otherwise be granted.

Q. Amendment Policy

Amendments to existing easements held by the Trust may be considered at the discretion of the Trust. Amendments to existing easements may only be approved by the Trust if the consequent of the amendment is to strengthen the protections offered by the easement, or to otherwise protect the conservation value of the property that is the subject of the easement.

R. Expenses and Fees Associated with Potential Easement Donation

The Trust, at its discretion, may require fees for the monitoring, maintenance, and related activities in order to offset its costs of examination and administration and any other costs incurred incidental to its activities.

APPENDIX A

Cornerstone 2020 Goals and Objectives that support the Jefferson County Environmental Trust Policies

Parks, Open Space, Greenways, Farmlands and Cultural Resources Goals

Easements will generally be considered on lands on which easements are consistent with and help to achieve the adopted Goals and Objectives of Jefferson County including the following:

- a. Marketplace Objective D2.1. Enhance the quality of life in Jefferson County by affirming and protecting the economic value of neighborhoods and natural resources.
- b. Livability Goal B.2. Water Quality. Improve water quality throughout the metro region in order to preserve and enhance biological integrity and to support human use and contact recreation.
- c. Livability Objective B2.2. Encourage the multi-purpose use of stream corridors and drainage facilities as a means of improving water quality.
- d. Livability Goal B.4. Wetlands. Recognize wetlands as important ecological systems that can serve a beneficial function including water quality improvements, flood control, or enhancement to resident or migratory wildlife.
- e. Livability Objective B4.2. Protect functional wetlands from disturbance, degradation or infringement.
- f. Livability Goal E.4. Protect steep slopes and sensitive soils.
- g. Livability Goal F.1. Habitat and Biodiversity. Protect, to the extent possible, wildlife sanctuaries, wetlands, major forested areas, nature preserves, publicly owned parks, unique natural areas or other areas with significant landscape features.
- h. Livability Objective F.1.1. Develop and implement strategies to inventory, preserve, enhance and acquire the best examples of the diverse natural habitats and ecosystems of Jefferson County for future generations and research purposes.
- i. Livability Objective F1.2 Encourage, as part of a voluntary habitat protection strategy, preservation and restoration of significant habitat areas in new developments through sensitive site design techniques. Privately owned open space, unique natural areas and other landscape features determined to be of community-wide significance may be preserved through voluntary measures, such as outright public acquisition, conservation easements and scenic easements.
- j. Livability Goal F.2. Enhance, preserve and restore the natural landscape character of Jefferson County.
- k. Livability Goal G.1. Preserve notable archaeological resources.
- l. Livability Goal G.2. Agricultural Operations. Encourage programs that help support landowners who wish to maintain or establish agricultural operations in Louisville and Jefferson County.
- m. Livability Objective G2.1. Support landowners who wish to maintain or establish traditional agricultural operations.
- n. Livability Objective G2.2. Support the trend toward alternative farming methods that will allow production of fresh, good quality, local produce and other locally grown farm products.
- o. Livability Goal G.3. Farmland Preservation. Encourage the preservation of significant farmland through public acquisition or voluntary land protection strategies for landowners.
- p. Livability Objective G3.1. Develop methods and explore funding sources to preserve important agricultural lands identified as part of the public evaluation process.
- q. Livability Goal H1. Recreation. Provide a system of well-maintained parks and recreation facilities which meet the needs of the residents of Louisville and Jefferson County.
- r. Livability Objective H1.1. Provide a network of parks of varying sizes and functions equitably distributed throughout Jefferson County.
- s. Livability Objective H1.3. Establish a comprehensive, coordinated bicycle and pedestrian system connecting parks, greenways and recreational facilities.

- t. Livability Goal H2. Natural Resources. Form a network of open spaces and greenway corridors which protect significant natural resources.
- u. Livability Objective H2.1. Identify, preserve and restore riparian corridors, wetlands, woodlands and important groundwater recharge areas to protect water quality.
- v. Livability Objective H2.2. Preserve and enhance significant habitat for wildlife and threatened, endangered and special concern species.
- w. Livability Goal H3. Open Space for Aesthetic, Cultural and Educational Purposes. Promote a parks and open space system which preserves and enhances visual quality, protects historic and archaeological resources, provides opportunities for education, and accommodates agricultural and forest resource.
- x. Livability Objective H3.1. Protect and provide public access to scenic resources.
- y. Livability Objective H3.2. Preserve and restore cultural resources as part of the parks and open space system.
- z. Livability Objective H3.4. Promote the long-term preservation and economic viability of active farmland, prime agricultural soils, and productive woodland.
- aa. Livability Goal H4. Public Health and Safety. Incorporate land needed to protect public health and safety into the open space network.
- bb. Livability Goal I2. Recreation, Health and Fitness. Provide, through a system of stream corridor/greenways, diverse, universally accessible recreational opportunities for citizens to maintain a fit and healthy lifestyle.
- cc. Livability Objective I2.1 Provide interconnecting park-like open space opportunities throughout Jefferson County, linking various land uses together with an off-street network of trails.
- dd. Livability Goal I4. Operations and Management. Develop strategies for public private partnerships to ensure the establishment and long-term management of the multi-objective stream corridor/greenway system.
- ee. Livability Goal K2. Recognize the Ohio River Corridor as a place where people connect to the River, in an accessible landscape for gathering, celebration, contemplation, and recreation.
- ff. Livability Objective K1.2. Enhance connections providing access for pedestrians and bicyclists between the river's edge and adjacent neighborhoods.
- gg. Livability Objective K1.4. Enhance and maintain views of the Ohio River from the River's edge, including the Ohio River Trail, roads, parks and other public open spaces.
- hh. Livability Objective K3.1. Identify, and preserve and encourage restoration of important natural resources within the river corridor such as wetlands, steep slopes, and significant habitat areas.
- ii. Livability Goal K5. Recognize the Ohio River corridor as a place where people connect to the past, present and future, by defining, preserving and interpreting the community's cultural heritage and identity.
- jj. Livability Objective K5.1. Encourage the preservation of significant history and archaeological sites, buildings and landscapes within the River corridor.
- kk. Livability Goal L1. Jefferson Forest Natural Resource Protection. Protect the unique natural communities and preserve the biological diversity within the woodlands, meadows, streams and ponds of the Jefferson County Memorial Forest.
- ll. Livability Goal L2. Restore impacted areas, improve biological diversity, and enhance wildlife habitat within the Jefferson County Memorial Forest.
- mm. Mobility Objective C1.4. Encourage the preservation of important cultural resources, landscapes and scenic vistas in the design, maintenance and development of major thoroughfares and parkways.
- nn. Mobility Objective D1.1. Safeguard the historical, cultural and archaeological resources (districts, sites, buildings, structures and objects) that are significant to the region.
- oo. Community Form Objectives J1.1, J1.2, J1.3. Recognize the community-wide importance of the resources contained in the areas surrounding Floyds Fork, the Ohio River and their major tributaries, and the Jefferson County Memorial Forest.
- pp. Community Form Objective J2.3. Develop and implement non-regulatory programs and mechanisms to protect views, scenic resources and visual quality of life.