

Protecting Municipal Parks & Conservation Lands
Presenter: Edward Sortwell Clement, Jr., Esq., Aquidneck Land Trust
Annual Rhode Island Land & Water Conservation Summit
URI Memorial Union, Kingston Campus
Saturday, March 15, 2008

Underlying Theme: Good conservation is like good government, it requires checks and balances!

- I. The Threat
 - A. Examples of converted, or almost converted, municipal conservation lands
 1. Miantonomi Memorial Park, Newport, Rhode Island
 2. Middletown/Kempenaar Parcel, Middletown, Rhode Island
 3. Franciscan Park, Providence, Rhode Island
 4. Other
 - B. Examples suggest that not all conserved land is equal – that there are different levels of protection and vulnerability
- II. Ways to Address the Threat Based on the Aquidneck Land Trust Model
 - A. Map and identify all conserved lands in your area, and the levels of protection afforded those lands
 1. One possible classification system for different levels of conserved lands which is an attempt to strike a balance between simplicity and accuracy
 - a. Land Conserved with a Perpetual Conservation Restriction – Land that has a perpetual conservation restriction (e.g., Conservation Easement or Deed to Development Rights) on it held by an entity, besides the landowner, that is recognized as a qualified organization under s. 170(h) of the Internal Revenue Code
 - b. Land Conserved with a Deed Restriction – Land encumbered by permanent conservation deed covenants and owned by a qualified organization, as recognized under s. 170(h) of the Internal Revenue Code, for conservation purposes, but land lacks a perpetual conservation restriction (e.g., Conservation Easement or Deed to Development Rights) held by another

entity, besides the landowner, that is recognized as a qualified organization under s. 170(h) of the Internal Revenue Code

c. Land Held with Conservation Intent Alone – Land owned by a qualified organization, as recognized under s. 170(h) of the Internal Revenue Code, for conservation purposes, but land lacks permanent conservation deed covenants and a perpetual conservation restriction (e.g., Conservation Easement or Deed to Development Rights) held by another entity, besides the landowner, that is recognized as a qualified organization under s. 170(h) of the Internal Revenue Code

2. Land Conserved with a Deed Restriction and Land Held with Conservation Intent Alone levels can be further secured with perpetual conservation restrictions

3. Numerous other possible classification systems

B. Prioritize the threatened conservation lands to be further secured with Conservation Easements, etc. (strategically identify those parcels with the most conservation values and greatest risks, etc.)

C. Educate the public about the threat and identify for them all the conserved lands, and the corresponding conservation levels, in their area (i.e., set the stage for increasing protections on threatened conservation lands and help the public keep an eye on those lands)

D. Selling points to municipalities for increasing protections on parks and other conservation lands (placing a Conservation Easement on a park can provide supplemental stewardship by a local land trust, protect important municipal conservation lands from future town councils that may look for a quick fix to a budgetary problem, financial incentives, etc.)

E. Ways to address condemnation concerns with a Conservation Easement placed on governmental conservation lands – layers of protection – holding a Conservation Easement on the subject property gives you a seat at the condemnation negotiation table

1. Monetary consideration/contract argument

2. Governmental entity waiving condemnation rights in Conservation Easement

3. Required compensation for the value of the property interest (i.e., Conservation Easement)

4. Competing public purposes argument (Is the conservation land actually creating more public good than the proposed roadway, etc.?)
 5. Negotiations to limit the impact to the conservation land (e.g., after negotiations, perhaps only part of the conservation land needs to be condemned)
 6. Conveying Conservation Easement to a higher level governmental entity prior to condemnation action being completed
 7. Enlisting public and political support for the conservation land at risk
 8. Etc.
- F. Helping municipalities pro-actively adopt public procedures for the conversion of conservation lands when necessary – examples of criteria for such public procedures follows
1. Well documented compelling public need that substantially outweighs the public good afforded by the government conservation property at issue
 2. Well documented and thorough search for other possible non-conservation host lands and clear conclusion that the government property at issue is the only feasible site
 3. The area of the government conservation property being considered for conversion is the minimum area necessary to meet the need
 4. Prior to final approval and conversion of the government owned conservation property at issue, a new and not yet conserved parcel in the appropriate area, at least equal in natural resource values and acreage to the government conservation parcel at issue, must be acquired by the government for conservation purposes
 5. Well documented and thorough evaluation of original grantors and/or donors intent to ensure that there is no violation of such intent (In other words, honor those that helped the municipality acquire the conservation parcel at issue. Trust is the foundation for any successful land conservation program.)

6. No conversion will run counter to any applicable laws and/or affect the status of the municipality under any applicable laws

G. Aquidneck Land Trust success with conserving municipal parks and conservation lands – started with simple projects and built a foundation that allowed for increasingly sophisticated projects over time

III. Other Related Issues

A. Other creative ways to address the threat

B. Solutions can also be applied to non-governmental conservation lands at risk

C. Charitable Trust Doctrine

D. Public Trust Doctrine

E. Adopting a municipal conservation initiative is a great way for a local land trust to build ties with a municipality, complete important projects without great financial expenditure, increase the visibility of the land trust, etc.