

# Regulatory conservation easements

## Frequently asked questions

### **What is a conservation easement?**

A conservation easement is a legal agreement designed to preserve open spaces, groundwater recharge areas, environmentally sensitive lands, wildlife habitat and historical features on a specific parcel of land.

Some conservation easements are donated or sold to the St. Johns River Water Management District by landowners. These are referred to as negotiated conservation easements. Others are called regulatory conservation easements and are intended to offset environmental impacts from development. This fact sheet deals with regulatory easements.

Conservation easements give the District certain, specific rights to the property, but do not grant land ownership to the District. The landowner retains ownership of the land and the rights not relinquished in the agreement. Many times, the restrictions imposed by the easement document safeguard the land by prohibiting the construction of buildings or other structures, excavating soil, or removing or destroying trees or native vegetation.

### **Do I have a conservation easement on my property?**

Any conservation easements recorded in public records prior to the purchase of your property will be included in the title search. Because an easement is recorded in public records, the public, including landowners, are put on notice that the easement exists. The conservation easement document or the recorded plat for your subdivision should contain a legal description and sketch, showing the location and dimensions of the preserved area on your property.

While the boundary of a conservation easement may be permanently marked with

survey posts or stakes, as with any property boundary, only a survey by a certified land surveyor can accurately delineate the boundary of a conservation easement.

### **What activities are generally prohibited on conservation easements?**

Conservation easements exist to preserve natural lands, so any activity that alters a conservation easement area is typically prohibited. Specific restrictions are listed on the conservation easement document.

### **Can I mow or trim the weeds in a conservation easement?**

Conservation easements usually prohibit the destruction, clearing or trimming of any vegetation within the easement area. An exception to this is the removal of exotic or nuisance plants. The District can help you identify exotic or nuisance plants. At times, these plants can be removed as part of a site-specific management plan.

### **Can I remove dead trees from a conservation easement?**

Dead trees and other vegetation provide invaluable habitat for a diversity of wildlife. Removal of a dead tree could alter some of the easement's natural functions that provide environmental protection. However, if a dead or damaged tree poses a hazard to a residence, the District may give permission to remove the tree, or to minimize the hazard in other ways.

### **Can I place yard waste, soil or other materials in, or remove materials from, a conservation easement?**

Adding materials, such as in the construction of a trail, or removing soil,

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rock, mulch or other materials, or removing vegetation, is prohibited.

### **Can I build a boardwalk, fence or pier in a conservation easement?**

Construction of boardwalks or piers is allowed only if the easement's legal records specifically state the right to do so has been retained by the landowner.

### **Are conservation easements open to the public?**

Typically, conservation easements do not grant the right of public access.

### **Who is responsible for protecting conservation easements?**

Protection of a conservation easement area is the responsibility of the property owner, or whoever performs the maintenance. The District is not the landowner and is not responsible for maintaining the conservation easement. However, the District does monitor the status of conservation areas to ensure they are being maintained in accordance with the provisions of the agreement.

If you do not know who is responsible for the maintenance of a conservation easement where you live, the District recommends you contact the homeowner's association, which is often the responsible party. As the person living closest to the easement, you can help ensure that the area remains healthy by notifying the party responsible for the easement's maintenance of any conditions and activities that could be harmful.

### **What would happen if someone altered or damaged a conservation easement?**

The District realizes that the majority of homeowners understand the importance of conservation easements for protecting Florida's natural environment, and many

are willing to work together to resolve problems arising from unauthorized activities. However, because certain property rights to a conservation easement are given to the District, the District may take the necessary means to protect a conservation easement area and the natural resources found there. The courts can force those who violate conditions of an easement to restore the damaged property and pay fines or penalties for damaging the property.

### **How are conservation easements formed?**

Most land developments, including residential subdivisions, require permits from the District to ensure the development will not cause flooding, degrade water bodies, or adversely impact wetlands or other natural resources. To protect wetlands or to offset impacts from permitted construction projects, the wetlands that remain on a permitted property, along with natural areas bordering them, often are placed in a conservation easement. Frequently, these easements are located on or behind future home lots.

### **How do conservation easements work?**

To understand the concept of conservation easements, think of land ownership as a bundle of rights. A landowner may sell or give away the whole bundle, or just one or two of those rights. These may include, for example, waiving the right to construct buildings or other structures; to dump soil, trash, waste or other harmful materials; to excavate, dredge or remove soil or peat, or otherwise affect the surface; or to remove, destroy or trim trees, shrubs or other vegetation.

The owner and the prospective easement holder identify the rights and restrictions

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on use that are necessary to protect the property — in short, what can and cannot be done on the property. The specific rights a property owner gives up when granting a conservation easement are spelled out in the easement document. This legal document is then recorded in the public records of the county in which the property is located to provide notice to the public and prospective buyers that the conservation easement exists. These restrictions on the use of the property are conveyed with the title to the land and are thus transferred along as the property is bought and sold.

When granted as part of a District approved mitigation plan, the conservation easement must be granted to the District forever — known as in perpetuity.

***Do conservation easements have any financial or tax benefit to landowners?***

Conservation easements may provide some economic benefits to the adjacent landowners. In fact, studies suggest that properties located in close proximity to preserved lands retain their value better than properties that are not located near preserved lands. It is important to remember that conservation easements must be properly managed in order to provide maximum benefits for people and the environment.

Landowners can also receive certain tax advantages for entering into a conservation easement. When making a land donation for a qualified

conservation purpose, federal income tax deductions can be made. Internal Revenue Service (IRS) regulations require the property to have significant conservation values, and the property must meet IRS tax code provisions. Savings in estate taxes can be made when passing on land protected by a conservation easement. Though the payment of property taxes is still a responsibility of the landowner, a reduction in that amount is a possible tax benefit. The District recommends that landowners seek professional tax counsel to determine the tax benefits for donating an easement.

***Why are conservation easements necessary?***

Florida is a state with an environment like no other. Marshes, rivers, lakes and sparkling springs dot the Florida landscape, attracting visitors and new residents every day. As Florida's population increases, so does development, increasing the demands on our natural resources.

Through the use of conservation easements, landowners and the District are preserving land and protecting water resources, which are also helping to ensure that Florida's wildlife will always have suitable homes and that current and future generations will have an opportunity to enjoy a healthy environment.

***Where can I obtain more information?***

For more information, contact the District's Department of Water Resources at (386) 329-4347.

The following Web sites can help you determine if you have any nuisance or exotic plants growing in an easement:

- [http://www.fleppc.org/ID\\_book.htm](http://www.fleppc.org/ID_book.htm)
- [http://www.plantatlas.usf.edu/adv\\_search.asp](http://www.plantatlas.usf.edu/adv_search.asp)

