



LAKES REGION CONSERVATION TRUST

Conservation Easements

What Is a Conservation Easement?

A conservation easement is a legal agreement between a landowner (the "grantor") and a land conservation organization, such as the Lakes Region Conservation Trust (LRCT), or a governmental entity (the "grantee") that can be utilized by the landowner to ensure the permanent protection of the conservation values of his or her land. In simple terms, a conservation easement is a legally enforceable commitment made by the landowner that he or she, and all future owners, will never develop the land.

It may help to think about the ownership of land as the holding of a bundle of rights, such as the right to build a new house, to develop the land commercially, to subdivide the land, to cut timber, to farm, and to sell the land or pass it on to heirs. A conservation easement separates the rights to build, develop, or subdivide from the actual ownership and other uses of the land. Thus, the landowner gives up these "development rights" but can continue to use and enjoy the land in other ways as before.

The landowner can still convey the land to anyone at whatever price they agree on and has the satisfaction of protecting the land forever from further development. In addition, he or she may benefit from significant tax advantages, and the community receives and enjoys the benefits of permanently conserved land.

The grantee that receives and holds the conservation easement does not have the right to exercise the development rights given up by the landowner; those rights are essentially extinguished. The conservation easement holder's responsibility is to monitor the land to ensure compliance with the terms of the easement and to enforce the easement terms, if necessary.

The decision by a landowner to create a conservation easement is strictly voluntary, and to a certain degree, a conservation easement is flexible and can be tailored to suit the particular property and the landowner's needs and objectives. For example, sometimes a landowner will place a conservation easement on a portion of his/her land, reserving full development options for the balance of the property. In addition, a conservation easement may specifically provide for and encourage certain activities on the land, such as agriculture, recreation, and timber management, provided those activities are consistent with the protection of open space and environmental quality.

A conservation easement is governed by requirements of the United States Internal Revenue Code and New Hampshire law, and it is recorded at the county registry of deeds. Once the conservation easement has been granted, the restrictions on specified uses and activities "run with the land" and are binding in perpetuity on all future owners of the property. Consequently, as with all important decisions regarding legal and tax matters, it is important for a landowner considering a conservation easement to seek appropriate legal and/or tax counsel.

Typical Conservation Easement Restrictions and Rights

In working with a landowner on a conservation easement, the Lakes Region Conservation Trust utilizes a model easement that we have developed and refined through use for numerous properties over many years. While it is important for the landowner to understand all provisions of the conservation easement, the following provides an overview of the key restrictions and rights typically included in the conservation easement.

1. Use Restrictions: The following are restrictions on property uses and activities that are typically included in a conservation easement.
 - Maintain the property as open space.
 - Authorization for agriculture and forestry, subject to certain requirements including a forest management plan for timbering.
 - No permanent or temporary structures or signs, except as specifically provided.
 - No excavation or alteration of the land surface, surface waters, and groundwater, with certain exceptions.
 - No dumping or storage of waste, and no underground or aboveground storage tanks.
 - No commercial recreational activity; no motorized or mechanized vehicles, except as specifically provided (e.g., certain vehicles on specified trails; use of such vehicles by the landowner only; logging, agricultural, and trail maintenance vehicles; emergency vehicles).
 - No alteration of stone walls or other boundary markers.
 - No new rights-of-way or access easements for third parties, except as specified.
 - No subdivision, and no use of the property to aggregate with another parcel to satisfy zoning or other requirements that the other parcel can't otherwise meet.

2. Landowner's Reserved Rights: The following are rights to conduct certain activities that would ordinarily be inconsistent with the use restrictions but that are typically reserved to the landowner in the conservation easement.
 - Repair and maintenance of existing roads, bridges, and rights-of-way; construction of trails, boardwalks, and wooden pedestrian bridges in accordance with certain requirements.
 - Posting of signs for certain purposes (e.g., describing permitted uses of the land; identifying trails, property boundaries, and points of interest; establishing reasonable limitations on public recreational access and use; prohibiting hunting, fishing, trapping, camping, snowmobiling, motorized and/or wheeled vehicles; temporarily preventing access to areas where authorized activities, such as timbering, are being conducted).
 - Construction of ponds for agriculture, fire protection, or wildlife habitat enhancement, in accordance with certain requirements.
 - Construction and maintenance of certain ancillary structures and improvements for forest management, agricultural, habitat management, conservation, or non-commercial outdoor recreational uses.
 - Maintenance of existing utilities, replacement of overhead utility lines with buried lines, and installation of utilities to serve a structure that is otherwise permitted.
 - Archaeological investigations, in accordance with certain requirements.

3. Conservation Easement Holder's Rights: The following are rights that are typically granted to the conservation easement holder in the easement.
 - Entry on the property to inspect for compliance with the conservation easement, to take action to address noncompliance, to maintain boundaries, to conduct scientific and educational observations and studies, and otherwise to exercise the easement holder's rights and fulfill its responsibilities under the conservation easement.
 - If, and to the extent, allowed by the conservation easement, allowing use of the property for non-motorized, non-mechanized recreational and educational activities (e.g., hiking, snowshoeing, cross-country skiing, picnicking, and nature observation and study; possibly horseback riding, hunting, and fishing). Ordinarily, it's important to LRCT for an easement to allow members of the public to be able to access and enjoy at least some of the land for hiking, snowshoeing, cross-country skiing, and nature observation.
 - If, and to the extent, allowed by the conservation easement, construction and maintenance of trails and posting of associated signs and markings.
 - Posting of signs and other actions to prohibit or restrict activities not allowed under the easement (e.g., motorized or mechanized vehicles or equipment).
 - Mowing of agricultural lands to maintain them in an arable state and preserve scenic views, if the landowner fails to do so and preservation of such lands is one of the purposes of the conservation easement.

Possible Tax Advantages for a Landowner Donating a Conservation Easement

In donating a conservation easement, a landowner and his or her heirs may be eligible for a number of tax advantages, as follows:

1. Income Taxes: A landowner's donation of a conservation easement may constitute a charitable gift that is deductible for federal income tax purposes. The easement must be donated to an eligible tax-exempt organization or governmental entity and must remain in effect in perpetuity. It must also serve one or more "conservation purposes" and meet certain other standards under the Internal Revenue Code. The value of the gift, determined by a qualified appraiser, is equal to the difference between the fair market value of the property before and after the easement takes effect. The amount that a landowner can deduct is based upon the value of the gift when it is made and is further defined by the landowner's particular tax situation.
2. Estate and Inheritance Taxes: Federal estate and state inheritance taxes may be imposed upon the value of a person's assets after he or she passes away, even if the assets were left to heirs under a valid will. Such taxes can be substantial, sometimes forcing heirs to sell inherited property to pay taxes, a result neither the landowner nor the heirs intended. When a landowner donates a conservation easement while still living, the value of his or her taxable assets is lowered, thereby reducing potential estate tax liability. A landowner may find that a conservation easement is an effective way to protect heirs from burdensome estate taxes on highly valued land, ensure that the family can continue owning and enjoying the land, and secure the land from unwanted development in the future.

3. Gift Taxes: When a landowner intends to give all or part of his or her land to a child or other person during his or her lifetime, the gift will be subject to federal gift taxes if its value exceeds a certain amount. Granting a conservation easement prior to giving land to others may reduce or even eliminate the gift tax by lowering the value of the land.

4. Property Taxes: Local property taxes are ordinarily based upon the value of the "highest and best" use of the land, which often is development. Since a conservation easement permanently removes development rights from the property, New Hampshire law requires towns to assess land subject to a conservation easement based upon the more limited uses allowed by the easement, and in no case at an amount exceeding the value that would be assessed under the New Hampshire current use assessment program. Consequently, a conservation easement may result in a substantial reduction in the property's assessed value. Of course, if the land is already enrolled in current use, a conservation easement is not likely to have any material effect on property taxes.

In addition to the tax advantages outlined above, survey and appraisal costs and legal fees associated with the charitable gift of a conservation easement also may be tax deductible. A landowner should consult with his or her legal or tax advisor for information on the applicability of any of these tax advantages.

Process for Conveying a Conservation Easement to LRCT

The following are the key steps in a landowner's conveyance of a conservation easement to the Lakes Region Conservation Trust.

1. LRCT Lands Committee Recommendation and Board of Trustees Approval: The LRCT Lands Committee will consider the proposed grant of a conservation easement and make a recommendation to the LRCT Board of Trustees. The LRCT Board must approve the acceptance of the conservation easement before it can be granted to the organization.

2. Agreement on Conservation Easement Terms; Preparation of Conservation Easement: Together, LRCT and the landowner need to discuss and agree on the terms of the conservation easement. Among the key topics that need to be addressed are: (a) the geographic scope of the easement (e.g., it is often prudent to exclude an area around existing structures so that the structures can be easily used, maintained, and modified in the future); (b) the restrictions on property uses and activities; (c) the rights that the landowner wishes to retain for himself or herself and future owners; and (d) the rights of the easement holder. Ordinarily LRCT takes responsibility for preparing an initial draft easement for review and for producing subsequent revised versions.

3. Confirmation of Boundaries of Land Subject to Conservation Easement: A legal description of the boundaries of the land subject to the easement and assurance that the boundaries can be found in the field are needed so that (a) LRCT and the landowner have the same understanding about what land is subject to the easement; and (b) LRCT will be able to monitor that land in the future. Assuming there is an existing survey and adequate boundary markings, nothing further

may be needed other than surveying and marking any area that is to be excluded from the easement.

4. Appraisal: For a charitable donation of a property interest valued at over \$5,000 for which an income tax deduction will be claimed, the IRS requires an appraisal meeting specified requirements. The donor claiming the tax deduction is responsible for determining the value of the donation and should use a qualified appraiser who follows the Uniform Standards of Professional Appraisal Practice. The appraisal cannot be made earlier than 60 days before the conservation easement is conveyed and must state the fair market value as of the date of the donation, and it must be received by the donor on or before the due date (including any extensions) of the tax return on which the deduction is claimed.

5. Title Search and Resolution of Title Issues: LRCT will have its attorney perform a title search to determine whether there are any title defects or interests in the land that need to be resolved, subordinated, or otherwise addressed before conveyance of the conservation easement. In particular, if the property is subject to an existing mortgage, the mortgage would need to be discharged or subordinated to the conservation easement.

6. Baseline Documentation: Documentation describing the property needs to be compiled for each conservation easement that LRCT accepts, in order to provide a baseline for future monitoring of the property. In addition, where a charitable deduction is claimed for a donated conservation easement, a record of the property's condition at the time of easement conveyance is required to satisfy IRS regulations. While this is an obligation of the landowner claiming the tax deduction, ordinarily LRCT prepares the baseline documentation for review and confirmation by the landowner.

7. Closing: Both the landowner and LRCT sign the conservation easement, and it is then recorded at the registry of deeds. LRCT will be responsible for recording fees for the conservation easement, but we ask that the landowner be responsible for recording fees for any mortgage subordination or other document needed to resolve a title issue.

8. IRS Form 8283 for Charitable Contribution: After completion of the transaction, the landowner is responsible for preparing IRS Form 8283, which specifies information regarding the property interest that has been donated and its appraised value. After the form has been signed by the landowner's appraiser, it is signed by LRCT. The completed Form 8283 is then submitted to the IRS with the landowner's tax return. If a deduction of more than \$500,000 is claimed, the appraisal itself must also be filed with the tax return.

9. LRCT Stewardship Responsibilities and Funding: In accepting a conservation easement, LRCT takes on stewardship responsibilities to ensure that the integrity and terms of the conservation easement are not violated. These include annual monitoring and documentation, communication with the landowner, review of easement terms and the monitoring process with new landowners in the future, and enforcement of easement terms, if necessary. These responsibilities are perpetual, and thus adequate funding for the required tasks is critical. LRCT attempts to secure conservation easement stewardship endowment funds in connection with easements that it plans to accept and asks landowners who are granting easements and receiving

tax benefits to consider contributing stewardship funds at the time of easement conveyance or in the future. In cases where a contribution from the landowner isn't possible, we may ask the landowner if he or she knows of people who might be interested in providing financial support for the conservation project, such as neighbors or other community residents who enjoy or appreciate the scenic beauty and natural values of the land.

10. Owner's Costs Associated with Granting a Conservation Easement: Costs for the landowner would include fees for any legal and financial advisors, costs of obtaining an appraisal, and costs of any survey or boundary marking that is needed. Some land trusts charge a fee for assisting landowners in protecting their properties through the use of conservation easements, but LRCT does not do this. We do greatly appreciate it if landowners recognize LRCT's costs in connection with a conservation easement project (e.g., staff and volunteer time, travel costs, supplies, and office overhead in connection with developing the conservation easement and preparing the baseline documentation, as well as easement monitoring and enforcement as described above) and consider LRCT in their future charitable giving.

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