

NON-REGULATORY

8. Conservation Easements

Overview

A conservation easement is a voluntary agreement between a landowner and a land trust or government agency that limits the type or amount of development on one or more parcels of land. (For simplicity, “land trust” will be the term used in this document.)

The easement is drafted specifically for the property in question, and identifies both the restrictions placed on the conserved property as well as the activities that are allowed. Landowners continue to own, manage, and pay taxes on the land and can sell their land; however, the conservation easement permanently remains on the property (a temporary easement, that expires after a fixed number of years, is also an option but this approach is very uncommon in Vermont).

Conservation easements have successfully protected hundreds of thousands of acres of productive forestland in Vermont and millions of acres of open space in the United States. They can minimize (and even permanently halt) the subdivision and fragmentation of forestland and enhance the quality of life for landowners and adjoining property owners. Furthermore, because of the flexibility in drafting a conservation easement, specific conservation values – from forestry to wildlands protection – can be targeted as ultimate goals of the easement. While the provisions of an easement provide guidance on how the land should be managed, supplemental management or stewardship plans may also instruct how the land is managed.

There are tax and estate planning benefits that could make conservation easements an attractive option. These benefits can include a reduction in estate tax liability, a charitable income tax deduction, and for some property owners, a reduction in property tax liability.

Common characteristics of a conservation easement include:

- **Protecting land for future generations.** Specifically, easements can help protect and preserve working or wild forests, farms, wildlife habitat, riparian buffers, recreational access, and a variety of other beneficial uses.
- **The landowner typically retains ownership of the property,** but by recording the easement in the town’s land records and through periodic review, the easement holder ensures that a property has not been subdivided or developed except as provided in the easement, and that the property is being managed in accordance with the terms of

the easement.

- **The landowner will usually be allowed, and is often encouraged, to use the land for farming, forestry, recreation, or education purposes,** as provided by the terms of the easement.
- **Clear parameters of the agreement.** This process of creating the document provides a level of flexibility and specificity that other strategies might lack, and ensures that the landowner’s goals are met.
- **The current owner retains most property rights.** Again, these rights are defined by the easement itself, but may include agriculture, woodland management and sugaring operations, construction of barns and farm structures, recreation trails, the construction of seasonal camps, and if specified in the easement itself or management plan, the potential to allow a predetermined number of subdivided lots.

Implementation

For the landowner interested in granting a conservation easement on their property, there are several steps to take.

Plan to conserve. The landowners should determine what personal goals they, along with their families or others with interest in the land, seek to accomplish with a conservation easement. Landowners should try and envision what the property will look like in 20, 30, even 100 years.



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Another relevant question is how the landowner views their relationship with the land: *as a legacy, a priceless family heirloom, or strictly as an asset?* Along with these concerns are more straightforward questions: *Do you care if your land is developed? Is it important that the land remain in your family? Do you want the land to remain intact regardless of who owns it?* Answering these questions will help to clarify the vision for the future, and the goals that must be met by the conservation easement. Because of land ownership and inheritance plans, this is often a family or group decision, which means that understanding everyone's expectations and vision for the property is a critical first step.

Gather information about the land. The landowner should gather all relevant facts about the land, its management, and other assets that the landowner holds.

Find and assemble your professional team. An appraiser, a certified public accountant, financial planner, estate-planning attorney, and land trust professional may be of assistance in order to achieve a landowner's goals of preserving the property into the future.

Appraise the land. In order to realize the tax benefits of a conservation easement, a landowner must have a qualified appraiser appraise the value of the property as a whole, as well as the value of the easement itself. A qualified appraiser is a state licensed professional who provides an objective analysis of the value of real property. Appraisers assemble a series of facts, statistics, and other information regarding specific properties, analyze this data, and then develop opinions about the land's value. To receive a tax deduction, a summary of this appraisal must be submitted with the donor's income tax return for the year of the gift. This appraisal is needed if a landowner is seeking a reduction of estate tax liability. (Please note that sometimes the appraisal that is completed to determine the value of the purchase of the easement may not be adequate for IRS purposes, and an additional appraisal or update of the original appraisal may be necessary.)

Work with a land trust or another qualified organization. Generally, a land trust will accept a voluntary conservation easement by donation if the property meets the land trust's criteria. In some circumstances, a land trust may purchase the conservation easement for a fee. The easement is drafted with the help of several professionals, and once completed, the easement document will be recorded in the town's land records. Essentially, once recorded, the easement is permanently attached to the deed of the property, and any potential buyer of the property that performs a basic title search will see the easement.

The easement holder or land trust will perform both education and monitoring functions. They will draft a baseline report, which includes a description of the property and resources and an assessment of the state of the property when the easement is granted. The easement holder also conducts monitoring by making regular – typically yearly – visits to

survey the property. These monitoring visits provide an optimal time for the current landowner to discuss any future changes they wish to make on the property with the land trust.

Things to Consider

What happens when the current landowner sells the land or passes it on to heirs? A properly drafted and executed conservation easement remains in force even after the land changes hands. Easements are recorded in the local land records and are binding on both present and future owners. However, it is up to the easement holder to ensure that the terms of the easement are being enforced. Often, to ensure continued stewardship of the land, land trust staff will reach out to landowners, particularly when there is a management plan in place.

How long will a conservation easement last? If drafted and recorded correctly, a conservation easement can be enforced in perpetuity. In order to ensure that this happens, the easement must be properly drafted and recorded in the town land records where the land is located, and the easement-holding organization must be organized such that it can enforce the easement in the future.

How can I decide which entity should receive my conservation easement? Landowners should look for the following characteristics: First, the land trust must be a qualified 501(c)(3) organization or a public agency. Second, the organization must be a good fit with the land values and goals of the property owner. Third, the landowner should research whether the land trust has the means and resources to continue its operation and whether a contingency policy exists for future oversight should the land trust cease to exist.

In the past few years, the Land Trust Alliance has created accredited status to land trusts across the country after a rigorous due diligence process. This accreditation conveys to landowners and supporters the strength and effectiveness of the land trust organization. Many land trusts have become accredited and others are considering when it would be most appropriate for their organization to apply for accreditation and must balance accreditation with their other program activities. Land Trust Alliance Accreditation can offer extra assurance of the quality and permanence of a land conservation organization.

What are the costs of establishing a conservation easement? The process of assembling attorneys, financial planners, and accountants can be time consuming and expensive. Appraisals and closing costs can also be expensive. Generally a land trust expects the landowner to cover some or all of the costs of conservation, including funds to offset the costs associated with ongoing stewardship of the easement. Some organizations can subsidize a portion of the costs associated with the project and future stewardship of the land.



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This may occur on a sliding scale based on a landowner's ability to pay or on regional support from donors. It is important to understand the costs and how they may be shared up front.

The donation of an easement may result in a charitable deduction for income tax purposes, as well as the reduction of estate tax liability and potentially property tax liability. Furthermore, if the parcel is deemed essential and meets certain criteria, a conservation easement can be purchased by a land trust, public agency or local open space program.

Does a landowner who grants a conservation easement on their property have to allow public access to their land?

Although owners of conserved land must allow the staff of the land trust onto their property to perform regular monitoring visits, the landowner generally decides whether or not to include a public access provision in their easement document for the general public. An exception to this may be when easements are purchased with certain public funds, such as the Forest Legacy Program (see *Chapter 10, Federal and State Assistance Programs*). In those cases, purchases

may be contingent upon allowing public access. In addition, conservation easements acquired by the Vermont Agency of Natural Resources generally must provide for dispersed, pedestrian public access.

How do conservation easements affect the taxable value of land?

Although a conservation easement can reduce the value of a property by restricting development rights, conservation easements do not always result in lower property tax bills. Local listers (tax assessors) are required to consider easements when assessing property, but local listers may not adjust the assessment to reflect restricted value if they have evidence that supports fair market valuation even with the easement on the property. For example, farm land often sells for the same amount whether development is restricted or not, since the demand for cropland is high. High value estates may also command high prices regardless of whether there is an easement on the property. In Vermont, landowners can appeal assessment values if they believe conservation restrictions have not been factored into the value of their property.

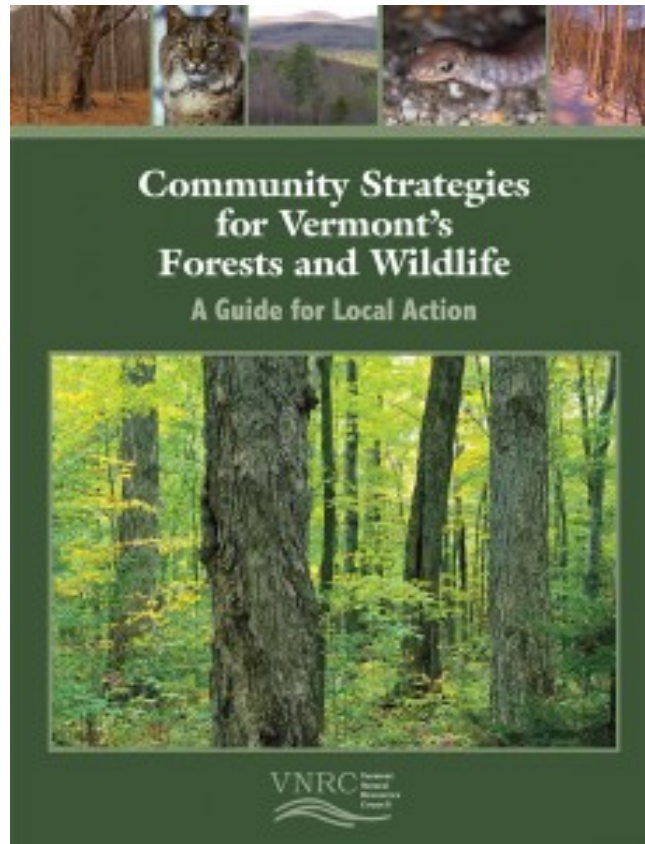


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This chapter is part of a larger publication called ***Community Strategies for Vermont's Forests and Wildlife: A Guide for Local Action***. You can download the entire publication or individual chapters (including the endnotes, resources, and credits page) for FREE at:

www.vnrc.org/programs/forests-wildlife/guide/



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