



GENERAL GUIDELINES FOR CONSERVATION EASEMENT PROJECTS

What is a Conservation Easement?

A conservation easement is a legally binding contract between a landowner and a land Conservancy. With this contract, the landowner agrees to permanently eliminate some of the uses of their land while retaining ownership and control. The landowner and land Conservancy work together to determine which uses should be prohibited to protect the conservation values of the land and which uses should be retained for future owners. For instance, our easement donors usually decide to retain the right to continue to live on the land, to farm and manage timber, enjoy hunting and other pursuits, to allow for a limited number of additional future residences for their children, and to sell, lease or bequeath the land to their heirs. In accepting the easement, the Conservancy is obligated to forever ensure the provisions of the easement are upheld.

What a Conservation Easement does?

An easement agreement typically:

- Restricts the uses of a property as necessary to protect its important natural, scenic and historic features
- Specifies the number, type and locations of dwellings and other buildings
- Prohibits quarrying and excavation of minerals
- Prohibits dumping of solid and liquid waste
- Limits the removal of trees without an approved forest management plan
- Restricts or eliminates industrial and commercial activities, except for agriculture.

What a Conservation Easement does not do?

An easement agreement typically:

- Does not permit public access to the protected areas, unless specifically desired by the landowner and the conservation organization (In certain situations, public access to a portion of the property may be necessary to meet the IRS's public benefit right.)
- Does not change the ownership of the land. Property owners continue to use and enjoy the land consistent with the terms of the easement
- Does not prohibit all subdivision. The property can often be subdivided, subject to the terms of the easement agreement.
- The purpose is to protect the natural, scenic or historic value of the property.

Scope of Work

Completing a conservation easement/conservation donation involves a number of specific activities leading from the first meeting with the landowner to the final recording of the easement document/warranty deed. The process includes extensive field work to document, inventory, and catalog the property's existing conditions and to determine the status of the natural and cultural resources. Federal regulations require that the condition of the property at the time of the easement donation be well documented. All pertinent information (reports, inventories and ordinances) will be compiled into a Baseline Document Report (BDR). The conservation easement will ultimately be tailored to protect those resources that are depicted in the BDR, and will serve as an ecological standard for future monitoring. Once the landowner and the Conservancy are in agreement regarding the scope of the easement, the final document can be created.

What is Tax Deductible?

The donation of a conservation easement/conservation property is treated as a tax deductible charitable contribution if it meets the "qualified conservation contribution" requirements of Internal Revenue Code § 170(h). In order to qualify under these requirements, an easement must be granted in perpetuity and exclusively for at least one of the conservation purposes described below:

- i) the preservation of land areas for outdoor recreation by, or the education of, the general public,

(ii) the protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem,

(iii) the preservation of open space (including farmland and forest land) where such preservation

is--

(I) for the scenic enjoyment of the general public, or

(II) pursuant to a clearly delineated Federal, State, or local governmental conservation policy, and will yield a significant public benefit, or

(iv) the preservation of a historically important land area or a certified historic structure.

Although our staff makes every effort to insure that the technical requirements of the tax code are met, Foothills Land Conservancy cannot guarantee that a tax deduction will result from every easement donation. While none of our current conservation easements have been challenged by the IRS, it is important to understand that a tax deduction will only be allowed if the easement meets the conservation purposes test. As a corollary to the conservation purposes test, if the easement meets one of the four aforementioned conservation purposes but permits the corruption of other conservation interests, the easement will not qualify as a tax deductible contribution.

Estate Tax Exclusion Information

Internal Revenue Code Section 2031(c):

i) 40% of land (with easement) can be excluded with a maximum of \$500,000

(ii) for eligibility under 2031(c), the easement must reduce the property by at least 30%*

*if property is reduced less than 30% when easement is put in place, a formulaic reduction approach is used)

(iii) carry-over basis on portion of property excluded from gross estate (deductible amount) when property is subsequently sold

Will There Be Additional Expenses?

In addition, a survey of the property may be required. Easement donors should also anticipate additional expenses for tax and/or legal advice. Foothills Land Conservancy is not qualified to

offer professional tax and/or legal services. Please be sure to consult your personal tax advisor and legal counsel to confirm the tax treatment of all such expenses. If you do decide to proceed with the easement donation without retaining legal counsel, we will ask that you sign a document upon closing that signifies that you have done this of your own volition and are fully aware of the consequences therein.

Appraisals

As recipient of your easement donation/conservation property donation, the Conservancy is prohibited from representing its value and maintains a neutral position regarding the hiring of appraisers. It is ultimately the donor's responsibility to contact a qualified conservation easement appraiser. However, we can provide a list of appraisers who are experienced in that particular field.

The cost of an appraisal depends on the complexity of the easement, the size of the property, and the fee schedule of the individual appraiser. Newly signed federal legislation (HR 4, 17AUG06) puts forth rigorous standards for qualified conservation appraisers:

1. The donor must obtain a written "qualified" appraisal

- the Treasury regulations outline specific information that must be included in the appraisal

2. The appraisal must be prepared by a "qualified" appraiser

- you should use a state-licensed or state-certified appraiser who follows the Uniform Standards of Professional Appraisal Practice (USPAP)

3. The appraisal must be current

- the timing of the appraisal is essential: it cannot be made earlier than sixty (60) days before the date of the gift, and must state the fair market value of the gift as of the date of the contribution. The entire written appraisal and Appraisal Summary (IRS form 8283) must be received by the donor on or before the due date (including extensions) of the tax return on which the deduction is claimed. In other words, the appraisal can be prepared after the easement is donated provided it is completed before the donor's income tax return is submitted to the IRS.

4. A copy of the appraisal should be provided to the Conservancy with the donation

- while Foothills Land Conservancy cannot pass judgment on the appraisal, it does have an interest in helping to see that the donor's appraisal will meet the IRS's requirements and that the value does not appear unreasonably high and thus attract an IRS challenge.

5. The appraisal should reflect a fair value for the donation

- if Foothills Land Conservancy believes that the valuation of the donation is not accurately described, the Conservancy may seek additional substantiation of value, and/or share these reservations with the donor in advance of signing IRS form 8283. Foothills Land Conservancy will not knowingly participate in a project where it has significant concerns about the validity of the tax deduction.

Project Conditions

The Conservancy cannot accept an easement donation/conservation property donation if conditions exist on the property that would violate the proposed terms of the easement. If any of those conditions (trash dumps, hazardous waste materials, improper land management practices) are discovered, the landowner will be informed at once and advised as to corrective measures to be taken.

Your easement will often contain provisions that restrict the following:

- vegetation management
- commercial and industrial uses
- some agricultural practices
- impervious surfaces
- excavations
- posting of signs
- construction of improvements
- dumping/depositing of waste materials
- underground storage tanks
- destruction of stream/pond/wetland buffers
- size and location of residential structures

In addition to these restrictions, the easement will contain other boilerplate provisions relating to:

- administration and enforcement of the easement
- limitation of Conservancy liability
- condemnation
- secondary ownership

These provisions reflect current laws and regulations. Should you or your legal representative seek changes in these provisions, it will be necessary to confer with the Conservancy's legal counsel. Legal fees incurred during these revisions will be charged to the easement donor.

All potential conservation easements/conservation donations must be reviewed and approved initially by the Conservancy Land Protection Committee, and ultimately by the entire Conservancy Board of Directors. A conservation easement/warranty deed represents a real property interest conferred to the recipient organization. That makes the recipient organization potentially liable for cleanup and remediation of any hazardous waste materials found on eased land. Based on historical usages and/or observed conditions, the Conservancy may require a Phase I, Phase II or Phase III Environmental Impact Assessment (EIS). The Conservancy may further require indemnification against liability associated with the presence of hazardous or toxic materials should those materials be found.

Easement Donation

In accepting your conservation easement/conservation property, the Conservancy assumes a legal obligation to uphold the terms and conditions therein. These responsibilities include the following:

- regular inspection of the property
- review of construction and subdivision plans
- administration and archival of all easement documents and records
- legal defense of easement provisions

The Conservancy does not wish to place an undue onus on individuals that wish to conserve their lands, but certain levels of monetary resources are necessary to monitor and enforce easements as required by IRS Code. That is why we recommend that an Easement Endowment be provided to cover future operating expenses.

Endowment costs are generally based on the following criteria:

- size of property
- location of property
- complexity of easement
- number and/or type of reserved rights

Confidentiality and Publications

The Conservancy will make every effort to respect the landowner's privacy during the course of an easement project. Unless otherwise requested, information regarding the specifics of a

particular conservation easement will be limited to Conservancy Board Members and Staff and will not be shared with public officials or the general public.

Once the easement has been duly recorded, it will become a matter of public record. At this point, the Conservancy may choose to include cursory information about your property and conservation easement in Conservancy information brochures and quarterly newsletters. Occasionally, articles are submitted to local, regional and national news agencies for publication. If you wish to remain anonymous, please let us know.

Foothills Land Conservancy's Commitment

Our commitment does not end when the easement is recorded. In fact, it has just begun! By definition, a conservation easement is perpetual. The Conservancy will monitor your property on a regular basis, and will maintain and curate an archive of all activities. If necessary, we will defend your easement in a court of law.

Conservancy Board Members and Staff will always be available to answer your queries, provide assistance in plan reviews and land management practices, provide information on local property tax issues, and work with your legal counsel and/or tax professionals. Please feel free to contact us regarding any conservation issues that may arise. In an effort to keep our easement donors well informed, you will receive a copy of our quarterly newsletter, and will receive an annual membership to Foothills Land Conservancy.

It is incumbent upon us to build a cooperative relationship with landowners and their successors in order to be good stewards of the land