

Conservation Easement Basics
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Theme: The law, in many ways, will decide whether Conservation Easements withstand the test of time in Rhode Island. Laws supporting Conservation Easements can be changed if the public does not support them. Therefore, the Rhode Island land conservation community has a responsibility to run and champion outstanding Conservation Easement programs worthy of continued public support.

I. Conservation Easement Defined

A. Simple Definition

Perpetual Conservation Easement – a legal agreement whereby a landowner transfers a partial property interest to a conservation organization or government agency to permanently limit a property’s uses in order to protect the property’s conservation values.

B. Rhode Island General Laws §34-39-2(a) “Definition”

A “conservation restriction” shall mean a right to prohibit or require a limitation upon or an obligation to perform acts on or with respect to or uses of a land or water area, whether stated in the form of a restriction, easement, covenant, or condition, in any deed, will, or other instrument executed by or on behalf of the owner of the area or in any order of taking, which right, limitation, or obligation is appropriate to retain or maintain the land or water area, or is appropriate to provide the public the benefit of the unique features of the land or water area, including improvements thereon predominantly in its natural, scenic, or open condition, or in agricultural, farming, open space, wildlife, or forest use, or in other use or condition consistent with the protection of environmental quality.

II. State Law and Federal Law – Crucial Underpinnings of Conservation Easements

A. Rhode Island Law

1. Rhode Island General Laws – Statutory Law – See Rhode Island General Laws for complete and actual details.

a. §34-39-1 Purpose.

The purpose of this chapter is to grant a special legal status to conservation restrictions... so that landowners wishing to protect and

preserve real property may do so without uncertainty as to the legal effect and enforceability... This chapter is further intended to provide the people of Rhode Island with the continued diversity of history and landscape that is unique to this state without great expenditures of public funds.

- b. §34-39-2(a) and (b) Definitions. See the §34-39-2(a) definition of “conservation restriction” above.
- c. §34-39-3(a), (b), and (c) Restrictions enforceable.

No conservation restriction held by any governmental body or by a charitable corporation, association, trust, or other entity whose purposes include conservation of land or water areas or of a particular area... shall be unenforceable against any owner of the restricted land or structure on account of lack of privity of estate or contract, or lack of benefit to particular land, or on account of the benefit being assignable or being assigned to any other governmental body or to any entity with like purposes, or on account of any other doctrine of property law which might cause the termination of the restriction... The restrictions shall not be subject to the thirty year limitation on restrictive covenants provided in §34-4-21.

- d. §34-39-4 Interests in real estate.

Conservation... restrictions are interests in real estate and a document creating a restriction shall be deemed a conveyance of real estate... A restriction may be enforced by an action at law or by injunction or other proceeding in equity.

- e. §34-39-5(a) and (b) Release of restriction.

... A charitable corporation, association, or other entity holding a restriction may release that restriction in accordance with the express terms of a restriction, applicable bylaws, or charter provisions of the holding entity, and applicable statutes and regulations.

- f. §45-36-1 “Open space” defined. Regarding open space conservation efforts by towns and cities.
- g. §45-36-2 Conservation of open spaces. Regarding open space conservation efforts by towns and cities.

2. Rhode Island Case Law – Infancy stages.

B. Federal Law – For our purposes today, only a partial examination of “qualified conservation contributions” under §170(h) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder. IRS tax-deductibility criteria. See the code and regulations for complete and actual details.

1. “Qualified real property interest”

A “perpetual conservation restriction” is a qualified real property interest.

2. Donated to a “Qualified organization”

To be considered an eligible donee under this section, an organization must be a qualified organization, have a commitment to protect the conservation purposes of the donation, and have the resources to enforce the restrictions. A conservation group organized or operated primarily or substantially for one of the conservation purposes specified in section 170(h)(4)(A) will be considered to have the commitment required by the preceding sentence. A qualified organization need not set aside funds to enforce the restrictions that are the subject of the contribution.

3. For “Conservation purposes” (must include at least one of the following acceptable resource categories)

a. Public outdoor recreation and education. Must be for the “substantial and regular use of the general public or the community.”

b. Protection of a significant habitat or ecosystem, including “buffer zones.”

c. Preservation of open space

1) Pursuant to a clearly delineated governmental policy and will yield a significant public benefit, or

2) For the scenic enjoyment of the general public and will yield a significant public benefit.

d. The preservation of a historically important land area or a certified historic structure

III. Key Components of a Conservation Easement – Complete Conservation Documentation – Documents Must Be Consistent and Thoughtfully Drafted

A. Conservation Easement

1. See definition for Perpetual Conservation Easement above
2. Must record in land evidence records of appropriate municipality

B. Legal Description

1. A formal description of real property complete enough that a particular piece of land can be located and identified
2. Generally Exhibit “A” of the Conservation Easement
3. Must record in land evidence records of appropriate municipality
4. Preferred method: based upon Class I Survey Plan

C. Baseline Documentation Report

1. Documents a property’s conservation values and other relevant information prior to acquisition of the Conservation Easement so as to establish an objective information baseline for monitoring compliance and management purposes
2. Possible Exhibit “B” of the Conservation Easement
3. Should record in land evidence records of appropriate municipality
4. IRS requirements – See code and regulations for complete and actual details
 - a. In the case of a donation made after February 13, 1986, of any qualified real property interest when the donor reserves rights the exercise of which may impair the conservation interests associated with the property, for a deduction to be allowable under this section the donor must make available to the donee, prior to the time the donation is made, documentation sufficient to establish the condition of the property at the time of the gift. Such documentation is designed to protect the conservation interests associated with the property, which although protected in perpetuity by the easement, could be adversely affected by the exercise of the reserved rights. §1.170A-14(g)(5)(i)

- b. The documentation, including the maps and photographs, must be accompanied by a statement signed by the donor and a representative of the donee clearly referencing the documentation and in substance saying “This natural resources inventory is an accurate representation of [the protected property] at the time of the transfer.” §1.170A-14(g)(5)(i)(D)

5. Possible components of a Baseline Documentation Report: Cover Page; Table of Contents; Acknowledgement of Condition Statement; Background Information [File Name, Current Landowner, Location of Premises, Premises Description (Acreage, Prior Land Uses, Current Land Uses, Proposed Future Uses, Conservation Values, Human Made Features), and Summary of Purpose of the Conservation Easement]; Location Map; USGS Topo Map; Tax Assessor’s Plat; Class I Survey Plan; Soil Survey Map; Aerial Photo; Photo Point Map; Photo Point Description Sheet; and Photographs

D. Management Plan

1. The Management Plan sets forth specific procedures by which the property shall be maintained so as to preserve the property’s conservation values
2. Possible Exhibit “C” of the Conservation Easement
3. Can record in land evidence records of appropriate municipality
4. Often the document that needs the most regular updating

E. Class I Survey Plan

1. Must conform to the Class I Standard as adopted by the Rhode Island Board of Registration for Professional Land Surveyors
2. Should record mylar version of Class I Survey Plan in land evidence records of appropriate municipality
3. Conservation area should be clearly delineated on Class I Survey Plan

IV. Due Diligence Prior to Conservation Easement Acquisition – Cut and Paste as Appropriate – Work with Competent Counsel

A. Strategic Project Selection

B. Initial Landowner Meeting

- C. Property Examination
- D. Selecting Best Conservation Method
- E. Ongoing Landowner Negotiations
- F. Agreement in Principle with Landowner
- G. Project Budget
- H. Appraisal Report (May Need to Provide Appraiser with Preliminary Subdivision Plan)
- I. Board Approval of Project – Conditioned Upon Successful Completion of Remaining Due Diligence Steps
- J. Purchase and Sale Contract or Option Agreement with Basic but Adequate Legal Description, Conservation Easement, and Possibly Other Exhibits
- K. Submit Grant Requests to Assist with Project if Applicable
- L. Environmental Assessment of the Property and Possible Remediation
- M. Class I Survey Plan and Legal Description
- N. Title Work with Title Commitment Before Closing
- O. Subordination Agreement(s) and/or Releases if Necessary
- P. Baseline Documentation Report
- Q. Management Plan
- R. Closing (often requires other documents: Mylar, Closing Statement; Title Affidavit; Certificates of Good Standing and Existence, Corporate Resolutions, etc.) and Recording of Executed Conservation Documentation
- S. Receive Grant Awards if Applicable
- T. Stewardship Endowment Fund and Legal Defense Fund Deposits Made
- U. Send Letter to Title Company Certifying Chain of Title in Order Since Date of Title Commitment Up Through Recording Date and Request Title Policy – Receive Title Policy
- V. Finalize Files for the Project

W. IRS Form 8283

X. Close Out Budget

**Don't forget, proper acquisition is really only the beginning of a good Conservation Easement program... Stewardship!... Stewardship!... Stewardship!...*