

Policy on Conservation Restriction

Introduction

A Conservation Restriction (CR), also known as a conservation easement, is a transfer of the right to develop property by its owner to a qualified grantee for conservation purposes in order to protect the property from future development. The recipient acquires the right and the obligation to enforce the restrictions that the transfer imposes, including the right to enter and inspect the property periodically.

The 300 Committee (T3C), as a legally eligible grantee for Conservation Restrictions, encourages and promotes the use of CRs as a cost-effective tool for preserving open space in the Town of Falmouth as noted in the open space section of Falmouth's comprehensive plan adopted in 1995. T3C's mission is served by holding CRs so long as each CR meets the threshold level of substantially protecting in perpetuity an area of land that might otherwise be threatened by development.

As a 501(c)(3) organization, T3C (the Grantee), may hold (accept) CRs from private individuals, and from private, public, or non-profit organizations (Grantors). In determining whether to hold the interest, the T3C must take into account the sum total of significant public benefit that the CR will produce. If the CR is accepted, both Grantee and Grantor work closely together to define a CR that is 1) acceptable to both parties, 2) effective in managing the acreage, and 3) enforceable to ensure the restriction will be upheld in perpetuity.

Conditions of Acceptance

Upon written request, T3C will consider acceptance of a conservation restriction. Documentation must be provided by the Grantor, including a certified plan, current deed, tax records, and any current encumbrances that may exist.

In most cases the T3C will require 60-90 days to consider the parcel and the proposed restriction and make a decision.

T3C Services

T3C can provide a guide to the actions and costs involved in recording a CR. In addition, T3C can arrange to prepare drafts and a final conservation restriction document with language as agreed to with the Grantor, as well as baseline documentation¹ on the parcel. T3C currently uses the services of The Compact of Cape Cod Conservation Trusts, Inc. (The Compact) for the preparation of both the CR and the Baseline Documentation Report and normally covers the cost of this preparation. The Landowner should be encouraged to use the services offered since The Compact's long experience will result in a more satisfactory CR as well as a much less expense for the Landowner. T3C should also encourage the Landowner to consult with his/her attorney and tax advisor.

¹ "A Baseline Documentation Report is a written report that accurately portrays the condition of the property as of the date that the conservation restriction was recorded, and serves as a benchmark for comparison against future conditions." (Massachusetts Conservation Restriction Stewardship Manual, Massachusetts Audubon Society, March 2006)

Procedure

The Administrator and a Board member serving on the Land Acquisition Committee (LAC) will review the proposal and discuss the objectives of the CR with the proponent. The T3C Board, upon the recommendation of the LAC, will then vote on whether to pursue the CR proposal.

Once a draft CR has been agreed upon and reviewed by The Compact, it will be brought to the LAC for consideration. The LAC will then make a recommendation to the T3C Board which, in turn, will vote to accept or refuse the CR, or request the LAC to renegotiate some part of the CR. If the CR is to be finalized by year-end, proper planning and scheduling will need to be reviewed. It is best to plan on at least six months to ensure that all approvals are obtained and recorded.

Grantor Obligations

An integral part of any CR consideration must be the financial and staffing capability to oversee and manage the restriction. Prior to accepting the CR, T3C will require an endowment fee to cover the financial and management implications of stewardship with the CR. The donation is based on the size of the property with a minimum of \$1,000 for up to 10 acres and \$2,000 for 10 to 20 acres. Over 20 acres will be negotiated based on the situation. The LAC will recommend accommodating hardship cases as necessary.

The reason for an endowment is that, in addition to the original documentation preparation costs, there are a number of continuing and direct costs associated with acceptance and management of a CR. Initial transaction costs include, but may not be limited to, legal review and defense, engineering consultation, site visits and any specialists that might be required.

The Grantor's costs also include the requirement that the property be surveyed and bounded with appropriate physical boundary markers before it can be accepted as a CR. (This survey and boundary requirement may be amended by a two-thirds (2/3) vote of the T3C Board if special circumstances dictate). This requirement is to properly identify and prevent future uncertainty about the area covered by the CR.

The Grantor is responsible for the justification of any deductions claimed or for any reduced assessments.

T3C should attempt to have a clause in the CR requiring the landowner to notify T3C if the property is offered for sale, if a purchase and sales agreement is signed, or if the deed is recorded in a name other than the landowner of record. T3C should include a form with the CR for notifying it of a change of owner.

Grantee Obligations

T3C will be responsible for costs of administering the CR after it has been accepted and registered in the Barnstable County Registry of Deeds. T3C obligations shall include overhead for office/programs and personnel, monitoring costs such as baseline surveys to record environmental features of the parcel, periodic visits and documentation, archiving of all appropriate records, enforcement costs when needed, and liability insurance.

Adopted by The 300 Committee Board of Directors, October 5, 2006