

P r o t e c t i n g y o u r p r o p e r t y w i t h a
C O N S E R V A T I O N R E S T R I C T I O N

CONSERVATION RESTRICTIONS

Qualified conservation restrictions (called conservation easements in other states) are voluntary legal agreements entered into between a landowner and a qualified conservation organization, such as the Sudbury Valley Trustees, or a government entity. Conservation restrictions (CR's) allow individuals or families to retain ownership of their land, while placing limitations on development and certain uses for themselves and future owners.

Each CR is tailored to the special features of the land and to the specific wishes of the donor. In most cases, the CR prohibits development and subdivision, road building, and other uses that would damage the land. Conservation restrictions can allow for certain uses to continue, such as woodland management, farming, fishing, boating, hiking, and horseback riding.

Most of the Conservation Restrictions held by Sudbury Valley Trustees are in place to protect sensitive natural resources or unique habitats. But CR's can also be used to protect working farmland, historic resources, drinking water supplies, or scenic views.

Where a house stands on a parcel of land to be protected by a CR, the house and surrounding lot are generally kept separate from the protected areas. Depending on the property characteristics, the CR donor may retain the right to set aside a specified number of building lots not subject to the CR, or to build specified additional structures within a defined portion of the restricted property. Except for rights expressly given up in the CR agreement, the owner continues to use and control the land as he or she sees fit.

CR's are perpetual. Restricted property may be bought and sold, but the CR "runs with the land" -- it is recorded with the Registry of Deeds and is binding on both the present and future owners of that property. In Massachusetts, CR's must be approved

by a municipality *and* by the State to be considered valid.

While SVT encourages landowners to grant access to the general public for passive recreation on restricted properties, public access is not a required facet of a conservation restriction.

THE PROCESS

The first step in the CR process is usually a site walk with the landowner and an SVT land protection specialist. They will discuss the landowners' needs and desires for the property, as well as a project budget. A landowner should expect to hire several professionals during the CR process:

- An attorney to review the CR and any other necessary legal documents;
- A land planner or engineer, and possibly a surveyor.
- An appraiser, if the landowner wishes to take a charitable deduction for the gift of the CR (see "Tax Implications" below). Appraisals must be to IRS standards.

While any necessary land planning gets underway, SVT will prepare a first draft of the CR for review by the landowner and his or her attorney. This document is usually revised several times before a final draft is agreed upon. SVT also sends a draft to the state Office of Environmental Affairs for review and comments. When finalized, the CR must then be taken to the local conservation commission and Board of Selectmen for signatures. It is then submitted again to the state for final approval. When the signed CR is returned by the state, it is recorded at the Registry of Deeds. The entire process typically takes over six months to complete.

CR ENDOWMENT

When they receive a gift of conservation land, most land trusts will seek funding for a stewardship endowment for the property, which will cover future costs such as regular monitoring and any enforcement

action that may be required in the future. An important source of funds to cover these costs is often the granting landowner him or herself. It seems a lot to ask, especially since the landowner is already being most generous by offering to restrict the property. Nonetheless, many landowners appreciate the fact that SVT is providing a valuable and on-going service by helping them fulfill their wishes for the future of their land. In most cases, funds contributed toward these costs are themselves tax-deductible. If necessary, SVT may be able to turn to neighbors and the broader community to appeal for funds to support a project that benefits many by protecting important resources in their community.

TAX IMPLICATIONS

Donations of Conservation restrictions may result in tax savings for the donor (see SVT's information sheet, *Tax Advantages of Conservation Giving*). To do so, they must serve certain "conservation purposes" as defined by the IRS. These include:

- The preservation of land areas for outdoor recreation by, or the education of, the general public.
- The preservation of a relatively natural habitat for fish, wildlife, plants, or similar ecosystems.
- The preservation of open space (including farmland and forest land) where such preservation is for the scenic enjoyment of the general public, or is pursuant to a clearly delineated federal, state, or local conservation policy, and will yield a significant public benefit.
- The preservation of a historically important land area or a certified historic structure.

Once a CR is placed on the property, it is likely to lower the overall value of the property. A qualified appraiser will establish a value for the property before the CR is implemented. He or she will then consider the terms of the restriction, and establish a value for the property once restricted. The difference between the *before* and *after* values is the value of the CR, and is deductible.

If a conservation restriction is conveyed to a qualified organization with proper state and local approvals, the landowner may ask the local assessor to revalue the property to take into account the effect of the restrictions. If the restriction substantially reduces the overall development potential of the property (hence its fair market value), the landowner may make the case for a reduction in the property's assessment to the municipality's Assessor's Office. However, this abatement is at the discretion of the individual assessor, and such reductions can vary widely from

**Consult your attorney and accountant
when considering charitable
contributions.**

town to town and property to property.

BASELINE DOCUMENTATION

After a CR has been recorded, SVT stewardship staff will create what is called Baseline Documentation. This is simply a collection of legal documents such as the CR itself, maps, and written and photographic documentation of the land at the point the CR is recorded. This serves as a permanent record of the condition of the land, as well as a handy reference document where the landowner can find all of the restricted and allowed uses. This can also be updated over the years that follow.

CR MONITORING

An organization that holds a conservation restriction has a legal responsibility to uphold the terms of the CR. SVT's stewardship staff monitors its CR's regularly, usually annually. Stewardship staff will call or write the landowner to set up an appointment to walk the land and discuss any plans for the land that the landowner might have in the following year. It is also a good time for staff to answer any questions the landowner may have about the CR or the management of the land. This is a way for staff to stay connected with the owners of the Land and to ensure that the CR donor's intentions are upheld.