



Land Conservation Options

To understand the workings of a land trust, it is helpful to have a basic understanding of the types of property ownership available to the organization.

Fee-simple ownership of land gives a landowner maximum control over the use and management of the property and its resources. Generally, when someone owns land in a fee simple situation, they have a title to the land. A land trust holding title to a property may provide the strongest guarantee of long-term conservation, but fee ownership is not always the best or most viable option. A landowner may not wish to give up all control over their land, or an organization may lack the resources to purchase the property or meet the long-term demands of ownership. In these cases, a land trust may work with a landowner to secure a conservation easement.

A **conservation easement** limits certain specified uses on all or a portion of a property for conservation purposes while leaving the property in the landowner's ownership. Easements are almost always of perpetual duration. They are recorded at the county office where all deeds are recorded, and the easement's terms are binding on all future owners of the eased parcel.

Every conservation easement document is unique; the terms of the document are tailored to the particular property and the particular goals of the landowner and conservation organization. For example, an easement document might state that no building or road may be placed within 200 feet of a stream passing through a property, yet allow for a house to be built on another portion of the same property. Another easement document might permit farming on a property but forbid residential, retail, and industrial development. Yet another easement document may prohibit all activities except for sustainable forestry and recreation. The flexibility and applicability of conservation easements is nearly endless.

Conservation Transactions

A variety of methods exist for acquiring conservation easements and fee interests on land. Some transactions are quite simple—a landowner may donate a property or conservation easement to a land trust. Other transactions may be more complicated, involving combinations of techniques. Because each property is unique, the key is finding the technique or combination of techniques best able to provide the protection desired by the parties involved. Complicated projects may involve several different players, including conservation organizations, developers, government agencies and individuals, as well as various sources of funds.

Donation of Property by Landowner

A land trust's preferred method of acquisition is, of course, outright donation of fee simple ownership by the landowner, or the donation of a conservation easement over the landowner's property. Donations can generate substantial benefits for the landowner. The donor's federal income and estate taxes can be significantly reduced with a properly structured donation. Some form of conservation donation can be critical in cases where the landowners have an emotional attachment to the land and wish it to stay in the family. Although many donors have a strong philanthropic motive, the tax benefits certainly give an appealing additional impetus for conservation donations. The specific tax benefits and the requirements for receiving these benefits are described at length in other publications. Landowners may donate almost any property right or interest in their land, including the entire parcel in fee, a conservation easement, or other property rights such as an option or lease. Some donation variations are described below:

- *Donation by Will.* A landowner may leave land, a conservation easement, or other assets to a land trust in his or her will. Donation by bequest can reduce the estate tax for the donor's heirs by removing the value of the donation from the taxable estate. However, because the gift does not vest until the donor dies, there are no income tax benefits.
- *Conservation Easements.* Conservation easements are usually acquired by way of donation. To qualify for a deduction, an easement must first be donated in perpetuity. Second, it must be given to a qualified organization such as a land trust or public agency. Third, it must be given exclusively for conservation purposes. See the guide [Conservation Easements](#) to learn more.
- *Remainder Interests.* Landowners may donate their land to a land trust but reserve the right to live on or use the land for their lifetimes. Since this reservation could have considerable value, especially if the donor is relatively young, donations of remainder interests can result in considerably smaller tax benefits than outright donations.

Bargain Sale

In a bargain sale the landowner and land trust negotiate a purchase price below fair market value. Bargain sales can be an attractive option for landowners who wish to preserve their land but who also need income from the transaction. Although a landowner will receive more from a sale at fair market value than from a bargain sale, certain tax benefits can substantially reduce or eliminate the disparity.

Purchase at Fair Market Value

Purchasing land or conservation easements at fair market value is obviously an expensive acquisition method. However, if the land in question is important enough and the landowner has absolutely no philanthropic interest, there may be no other option for the land trust. Fortunately a number of approaches for funding the purchase exist.

- *Private Donations.* Individual people are the largest source of donations in America and are therefore critical to long-term conservation efforts. This cannot be

overstressed. Foundations and businesses are also sources of potentially substantial contributions.

- *Government Grants.* A variety of federal, state and local government agencies fund conservation projects. Land trusts sometimes qualify for these government funds. In the state of North Carolina, the [Clean Water Management Trust Fund](#) has been a funding source for transaction costs associated with the donation of conservation easements and also the acquisition of lands for conservation purposes. County and local governments vary widely in their commitment to conservation and their funding sources.
- *Loans.* A crisis situation may warrant a land trust buying a property using a loan to finance the purchase. Loans may be obtained from banks, individuals, foundations, other nonprofits, or businesses. A loan may be available from the seller or adjacent landowners who would benefit from the transaction. The Conservation Fund and [the Trust for Public Land](#) have helped many communities across the United States with interim financing for their conservation projects.
- *Trade Lands.* Land that has no specific conservation value may still be donated to a land trust for its monetary value. The land trust can then sell the property to finance other land protection projects or possibly trade the land for conservation property.

Conservation Buyer

A land trust may be able to link a conservation buyer with a landowner who wants to sell a property having conservation values. The conservation buyer is someone who wishes to own a property but who also wishes to preserve the property's natural values. To be effective in the long-term, the transaction should involve a conservation easement being transferred to the land trust. This method requires little or no financing by the land trust, though the trick is identifying interested conservation buyers.

Purchase and Resale

A land trust can purchase land and then resell the land subject to a conservation easement. The land trust can accomplish its conservation goal through the easement and also recover much of the expense associated with the original purchase. Land trusts often acquire land in need of quick protection with the expectation of later selling it to a government agency for parkland, game land, forest or other open space purposes. This involves some risk, since the agency may—perhaps counter to earlier assurances—choose not to acquire the land from the conservation organization. However, this approach has many advantages. Unlike most government agencies, land trusts can usually move swiftly to complete critical land transactions. In some cases, a landowner may not be willing to deal with government but would be happy to work with a private nonprofit.

Limited Development and Conservation Subdivisions

In a limited development project, a land trust acquires a piece of property and opens a portion of the property to development in order to help finance the original acquisition and the permanent protection of the remainder of the property. The conservation organization may simply subdivide the property into two parcels and sell one to a developer who will further subdivide, or the organization may take a more active role in the development of

the property. Limited development can be complex, time-consuming, controversial and financially risky. A land trust must be very cautious, well informed, and have good access to a variety of experts in the real estate and development fields before taking on such a project.

Alternatively, a developer might approach the land trust to help create a conservation subdivision on developable lands. Conservation subdivisions (CSDs) are a design strategy that attempts to preserve undivided, buildable tracts of land as communal open space for residents. In a conservation subdivision, ideally 50 to 70 percent of the buildable land is set aside as open space by grouping homes (“cluster development”) on the developed portions of the land. A land trust can work with the developer to help plan a community that contains open space corridors that conserve the natural features of the lands, and to provide the residents of that community with a certainty of open space in the long term by providing the third-party enforcement of open space protection within such a development layout.