



CONSERVATION RESTRICTIONS on CAPE COD

WHAT IS A CONSERVATION RESTRICTION?

A conservation restriction (CR) is a legal agreement between a property owner and a land trust (or government entity) permanently restricting the uses and activities that may take place on all or a part of a property in order to protect the land's conservation values. Each CR is tailored to the property, the interests of the owner, and the policies and purposes of the restriction holder.

To understand the CR concept, think of owning land as holding a bundle of rights. A landowner may sell or give away the whole bundle or just one or two of those rights. These rights may include, for example, the right to construct buildings, to subdivide the land, to restrict access, or to have a view. The specific rights a property owner gives up and retains are spelled out in the CR. This document also conveys to the holder of the CR (i.e., the land trust or government entity) the right to enforce the restrictions.

The property owner continues to own the land, and can sell it or pass it on to heirs. The CR "runs with the land" - meaning the original owner and all subsequent owners are bound by the restrictions. The CR is recorded at the Barnstable County Registry of Deeds so that all future owners and lenders will learn about the CR when they obtain title reports.

WHY GRANT A CR?

People grant CRs to protect their land from inappropriate development while retaining private ownership. By granting a CR in perpetuity, an owner may be assured that the resource values of the property will be protected indefinitely, no matter who owns the property in the future.

WHAT KIND OF PROPERTY CAN BE PROTECTED BY A CR?

Any property with significant conservation or historic preservation values can be protected by a CR. This includes forests, wetlands, farms, rare species habitat, beaches, scenic areas, historic areas, and more.

WHO CAN GRANT A CR AND TO WHOM CAN THEY GRANT IT TO?

Any owner of a property with conservation or historic resources may grant a CR. If the property belongs to more than one person, all owners must consent to grant the CR. If the property has a mortgage on it, the owner must obtain an agreement from the lender to release or subordinate its interests so that the CR cannot be extinguished in the event of a foreclosure.

A CR donor who wants to claim an income tax deduction for the gift must donate the CR (or sell it for less than fair market value) to a government entity or to a qualifying conservation organization. Most local and regional land trusts on Cape Cod are eligible to receive CRs for tax deduction purposes.

Holding a CR, however, is a great responsibility. A landowner should make sure the CR holder has the commitment and resources to carry out that responsibility. Organizations that accept CR donations often ask the owner to make a contribution toward the costs of monitoring the restriction in perpetuity.

HOW RESTRICTIVE IS A CR?

A CR limits uses and activities to the degree necessary to protect the significant conservation values of the property. Sometimes this totally prohibits construction, sometimes it doesn't. A CR offers great flexibility.

MUST A CR ALLOW PUBLIC ACCESS?

Landowners who grant CRs make their own choice about whether to open their property to the public. Some allow limited public access, such as for fishing or hiking in specified locations on the property. Most do not.

WHAT ARE THE GRANTEE'S RESPONSIBILITIES?

The grantee organization (i.e., land trust or town) is responsible for enforcing the restrictions spelled out in the CR document. To do this, the grantee visits the property on a regular basis, typically once a year. Grantee's representatives verify that any changes to the property from the conditions documented at the time of the donation are allowed under the terms of the CR. If the CR has been violated, the grantee has the legal right to require the owner to correct the violation and restore the property to its condition prior to the violation.

HOW CAN DONATING A CR REDUCE A PROPERTY OWNER'S FEDERAL INCOME TAX?

The donation of a CR may be a tax-deductible charitable gift, provided the CR is perpetual and is donated exclusively for conservation purposes to a qualified conservation organization or public agency. Section 170(h) of the Internal Revenue Code generally defines "conservation purposes" to include:

- Preservation of land areas for outdoor recreation by, or the education of, the general public.
- Protection of relatively natural habitats of fish, wildlife, or plants.
- Preservation of open space—including farmland and forest land—for the public's scenic enjoyment, or pursuant to a clearly delineated governmental conservation policy; in either case, such open space preservation must yield a significant public benefit.
- Preservation of historic properties.

For more information, contact The Compact of Cape Cod Conservation Trusts, Inc.: 508-362-2565 (phone) or compact@cape.com (email). Visit our website www.compact.cape.com. Material adapted from The Conservation Easement Handbook, available from the Land Trust Alliance, www.lta.org.

HOW IS THE INCOME TAX DEDUCTION CALCULATED?

To determine the value of the CR donation, the owner hires an appraiser, who determines the fair market value of the property as-is, meaning without the CR in place, and the fair market value of the property as restricted with the CR. The difference in these two values is the value of the CR donation. **For a CR recorded in 2008 or 2009**, the income tax deduction can be claimed against 50% of the owner's adjusted gross income each year for up to sixteen years.

CAN GRANTING A CR REDUCE PROPERTY TAX?

Property tax assessment usually is based on the property's market value, reflecting the development potential of the property. If a CR reduces that potential, it will reduce the assessment and thus, the property taxes. The actual amount of reduction, if any, depends on many factors. Most Cape Cod towns have adopted formulas which reduce property tax assessments by 75% to 95% on lands held under a CR.

HOW CAN GRANTING A CR REDUCE A PROPERTY OWNER'S FEDERAL ESTATE TAX?

Many heirs to historic estates and valuable tracts of open space who wish to keep their property are faced with monumental federal estate taxes, which are levied not on the value of the property as is, but on its fair market value—usually the amount a developer would pay. The resulting estate tax can be so high, heirs might have to sell the property to pay the estate taxes.

A CR can be used as an estate planning tool to reduce estate taxes. If the landowner has restricted the property by a perpetual CR before his or her death (or the executor restricts it after death), the property must be valued in the estate at its restricted value. Thus, the value of the estate will be less, and estate taxes will be reduced. There is also a 40% bonus reduction.

WHO HAS GRANTED A CR ON THEIR LAND?

On Cape Cod, almost 350 properties totaling over 5,000 acres have been voluntarily restricted. People who grant CRs share a desire to protect and enhance forever the natural, scenic and cultural resources of the community.