

CONNECTICUT Land Conservation Council

Model Conservation Easement Project *Protecting and Stewarding Connecticut's Open Space in Perpetuity*

A Project of the Connecticut Land Conservation Council made possible by the generous support of the Geoffrey C. Hughes Foundation

Dedicated in memory of Dennis G. Collins (1934-2014), Member of the CLCC Model Conservation Easement Working Group, Norfolk Land Trust Board of Directors, and Litchfield Hills Greenprint Collaborative Advisory Board

The Connecticut Land Conservation Council (CLCC) works with land trusts, other conservation and advocacy organizations, government entities, and landowners to increase the pace, quality, scale and permanency of land conservation in Connecticut while assuring the perpetual, high quality stewardship of conserved lands in the state. As Connecticut's umbrella organization for the land conservation community, CLCC focuses on building land trust capacity and sustainability, leading a unified land conservation voice for public policies that support land conservation, and engaging broad constituencies to foster a deep understanding of the benefits and need for land conservation.

Project Overview

To address the issue of lack of standardization of easement forms and terms, CLCC assembled a Model Conservation Easement Working Group (Working Group) of attorneys and conservation practitioners from around the state to research and draft a Model Conservation Easement (Model) for use by the Connecticut land conservation community, with a goal of simplifying language as much as reasonably possible and permitting adaptation to a broad array of situations.

The Model is intended to be used mainly as a “forever wild” easement, with one set of limitations that applies throughout the protected property and is aimed at properties with minimal use and minimal structures. It does not address working lands or historic preservation easements. This Model is a first edition, and CLCC plans to undertake future efforts to build on the format and “boilerplate” provisions to create other purposed documents and more alternatives.

The Need for a Model Conservation Easement

Conservation easements (CEs) continue to be one of the most important tools used by land trusts, government entities and landowners to protect open space and farmland in Connecticut. Well crafted CEs are a critical component of protecting land *in perpetuity*. CE terms, conditions and purposes clauses define allowable uses of land and the way a CE is drafted can have an enormous impact on what aspects of the land are protected and how the land acquired for conservation purposes can be used over time. In Connecticut, land trusts alone hold over 1,000 CEs and together with towns write an estimated 60-75 CEs annually.

Yet despite the prevalence of CEs and their importance to the long term viability of protected open space and farmland, many CEs are not written as well as they should be. Drafting errors

and omissions, inconsistencies and ambiguities in CE language are common problems that threaten the long term viability of the document and thus its efficacy in protecting conserved lands *in perpetuity*.

Connecticut Land trusts are particularly vulnerable, with little to no staff, limited funds to pay legal fees, limited experience in dealing with CEs. Further, there are a limited number of attorneys practicing in Connecticut who have substantial experience in drafting conservation easements.

Weakly drafted CEs create confusion and strained relationships between the landowner and the land trust. Misunderstandings may lead to violations. Land trusts may be forced to expend considerable sums enforcing CEs. The goal of the Model is to minimize the risk of loss of conserved lands and the associated loss of public's trust in the land trust's ability to fulfill its mission.

2014 Project Components

1. Model Conservation Easement: A first draft of the Model CE will be introduced to the land conservation community at the 30th annual Connecticut Land Conservation Conference on March 15.
2. Educating CE drafters: CLCC will undertake an expansive outreach and education effort through a training program to engage and educate CE drafters (including private attorneys, land trust staff and board members, state and local government attorneys and staff, and other conservation professionals) about the model document language and format and the rationale behind specific model document terms and conditions to help them to better draft legally sound and effective CEs for their own use or that of their clients.
3. Educating Conservation Land Stewards: CLCC will provide training for CE stewards (including land trust staff and monitoring volunteers, municipal staff and commission members, and state agency staff) about the model CE language and monitoring protocols to help them to better manage and monitor existing CE conservation lands.

Comments Requested

CLCC and the Working Group welcome suggestions for improving the substance and format of the Model and Commentary. Please share potential optional and alternative provisions and identify issues in need of further investigation. Comments may be directed to CLCC Executive Director and Project Coordinator, Amy B. Paterson at (860) 685-0785 or abpaterson@ctconservation.org.