



Conservation Easements: The Process

Placing a conservation easement on a property is a process that typically takes six to eighteen months. The time frame relies on how prepared the landowner is, the turnaround time when dealing with the conservation team of professionals and how complex the project may be.

The following will give you a general idea of the most common steps involved when placing a conservation easement on your property. It is not meant to be a conclusive list for all projects and while we have tried to put the steps in chronological order, several of these steps can be happening simultaneously.

Pre-Project Approval:

1) Determine if a Conservation Easement Will Meet Your Family's Personal and Estate Planning Goals

Often the decision of placing a conservation easement on your property is a family matter. Discuss the implications of an easement with the concerned parties and determine if a consensus can be reached. Consult with your financial advisor early and throughout this process to determine the federal and state tax benefits of completing a conservation easement and how that fits with your estate planning.

2) Determine if Your Project is a Fit for RiGHT and Vice Versa

Call RiGHT to determine if your property meets our criteria. In some cases a site visit will be necessary. You also need to make sure that this is a good fit for yourself. After a phone call or site visit, RiGHT will rank your property and the staff will present it to the Board of Directors. (RiGHT may decline to accept any conservation easement or other conveyance at any time, for any reason deemed appropriate by the Board.)

Determine Your Title and Mineral Rights to See if You Can Move Forward

1) Title Commitment, Mineral Rights Search and Title Insurance

Contact a title company and request a Title Commitment and mineral rights search. This will establish the legal description for your property, the legal landowners, determine if any title complications that need to be cleared up and if your mineral rights are severed from the ownership of the property. If we complete the project, RiGHT requests title insurance in the amount of value of the conservation easement.

If you have mortgages on your property, RiGHT will require the lien holder to subordinate the mortgage to the conservation easement.

2) Mineral Remoteness Letter

RiGHT requires all projects to receive a Mineral Remoteness Assessment, whether you own your minerals or not and you will need to contact a qualified geologist to receive a “Mineral Remoteness Letter”. This letter indicates that the surface or subsurface minerals are highly unlikely to be mined because the likelihood of mining is “so remote as to be negligible”.

If any problematic title exceptions cannot be remedied or you cannot obtain a Mineral Remoteness Letter for the majority of the property, RiGHT cannot complete a conservation easement with you.

Working to Complete Your Project

1) Find an Experienced Attorney

Do not make the mistake of thinking that all attorneys (and financial advisors) know the intricacies of conservation easements. Seek professionals who are knowledgeable about this subject and have them review all your documentation. It will save you time and money.

2) Determine Which Activities to Allow and Which to Prohibit on Your Land

Work with the RiGHT staff to create a list of permitted activities and restrictions that are often addressed with conservation easements.

3) Obtain a Preliminary Appraisal

Although you will need a full appraisal to complete a conservation easement, you may want to get a preliminary appraisal that will enable you to sit down with your financial advisor. Seek a state certified, experienced appraiser because this transaction will have to stand up to IRS standards and can have dire consequences if it doesn't.

4) Obtain a Baseline Document

Contact a biologist to complete a “Baseline Document” (also called a Present Condition Report). Through narrative, maps and photos the Baseline Document establishes the present condition of the property when the easement is put on it. It is required by the IRS and serves to: 1) demonstrate to the IRS that there are significant Conservation Values on the property, and 2) be the benchmark against which any violations of the terms of the conservation easement are measured.

5) Draft the Conservation Easement Document with Land Trust and Attorney

RiGHT has a boilerplate conservation easement document. However, each easement is tailored to the desires of the landowner and the needs of the land. You, your attorney and the staff at RiGHT need to work together to create mutually agreeable terms for your conservation easement deed. This deed may need to be passed back and forth several times to produce the final product.

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6) Obtain a Complete Appraisal

A complete appraisal is required in any case where tax benefits are sought. It is very important to tell your appraiser that the appraisal must be done within sixty (60) days prior to the donation of the easement.

7) Agree on Final Conservation Easement Document

After all parties (landowner, RiGHT and both parties attorneys) agree that the terms written in the conservation easement are acceptable, and all due diligence is complete, the deed is ready for filing.

8) Consult with Financial Advisor and/or Tax Credit Broker for Review

If you are considering using the benefits provided by the Federal or State Government, RiGHT suggests having your documentation reviewed before you sign and record the Deed of Conservation Easement. They should specifically review your title, appraisal and Deed of Conservation Easement.

9) Sign and Record Conservation Easement Document

The conservation easement document must be signed by the landowner(s) and the land trust and recorded in the County Clerks office of the county where the land is located.

After Completing Your Project

1) Consult with Financial Advisor Regarding Filing For Potential Tax Benefits

Complete the process with your financial advisor to file the appropriate forms and financials to receive potential Federal and State tax benefits.

In addition to the steps listed above, some cases may require other steps such as, a **survey, environmental assessment or ditch company resolution**. The staff at RiGHT can provide you with a list of professionals that we have worked with in these fields and guide you through the process and discuss your particular situation.

Disclaimer: While RiGHT is pleased to provide landowners with this service, our staff are not attorneys, financial planners and geologists or appraisers. As such, the RiGHT staff is not qualified to dispense specific numbers and information regarding these fields of expertise. We urge you to hire experienced consultants to complete your conservation team.