

LAND CONSERVATION

Insider Tips and Must-Knows About Conserving Your Land

BY SHAWN M. SMITH

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Conserving land is a permanent decision that effects its use and value forever. Therefore, the process should be governed by intelligent decision-making from the beginning.

Here are the 4 key players you'll need, and must-knows about each.

Easement Holders

There are usually two parties to a conservation restriction (CR), you (the landowner) and the easement holder.

- Despite their conservation focus, easement holders are not your advocate and are not qualified to offer professional advice. You need your own experienced advisor, or team of advisors (appraiser, attorney, land planner, financial advisor), to help you make decisions that are in your best interest.

- Getting to a final CR is a negotiation process that takes time. Typically, the easement holder provides the initial draft for your review, which marks the beginning of the process. Expect several back-and-forth's before a final version is agreed upon.

- If you intend to donate a CR and realize the value in the form of a charitable gift deduction confirm that the easement holder is an IRS-qualified entity.

Appraisers

Determining the CR's value is the job of a real estate appraiser.

- Be certain the appraiser is competent to appraise CR's and your property type. For example, if you own 1,000 acres, the appraiser needs experience with sophisticated highest and best use analysis, including land planning and regulatory review. This is the crux of the appraisal; it is where the value is established. The appraisal should maximize the CR value without sacrificing defensibility in the event of an audit.



Photo by Marge Beaver



Photo by Costa Boutsikaris

- If you plan to donate the CR and want to take a charitable gift deduction make sure the appraiser is IRS-qualified and prepares an IRS-compliant appraisal.

Lawyers

While it is not required, I strongly recommend that you hire an attorney. However:

- Not all lawyers are competent about CR's. You will need legal counsel who specializes in this area.

- Landowners often ask their attorney to select an appraiser and review their work for them. The trouble with this is most lawyers are not appraisers, and not equipped to manage or review an appraiser's work.

- Landowners also often rely on their lawyers to negotiate the terms of the CR with the easement holder on their behalf. The disadvantage of this is that a lawyer who isn't also an appraiser specializing in this area will not be able to spot terms that have an impact on value.

Financial Advisors

Be absolutely sure your financial advisor is competent about the tax code sections that relate to CR charitable donations and can properly integrate your tax needs. You do not want to finalize the CR believing you are entitled to a tax deduction and then find out after it has been recorded that there was a misinterpretation of the code and your gift value is diminished or gone.

Smartly conserving your land can achieve multi-dimensional goals, but will cost money upfront. It is to your advantage to invest in doing the job correctly in order to realize the greatest financial return and avoid costly mistakes.