

## Typical Prohibited Uses

Activities on or use of the property not consistent with the purpose of the easement are prohibited under a conservation easement agreement. The following are some examples of prohibited activities:

- 1. No soil, trash, liquid or solid waste, hazardous materials, or pollutants defined by federal or state law shall be dumped or placed on the property;
- 2. Activities or uses that will be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat conservation;
- 3. Activities or uses detrimental to the structural integrity or physical appearance of any portions of the property having historical, archaeological or cultural significance;
- 4. Planting of invasive exotic plants listed by the Florida Exotic Pest Plant Council, **and the grantor shall control invasive exotic plants on the property;** (*Forever at the owner's or their heir's expense regardless of cause or situation.*)
- 5. Commercial or industrial activity, or ingress or egress across or upon the property in conjunction with any commercial or industrial activity, except as may be required for the exercise of the grantor's reserved rights;
- 6. New construction or placing of buildings, mobile homes, signs, billboards or other structures on the property;
- 7. Creation of new roads or jeep trails;
- 8. No more intense agricultural use of the property than currently exists on the property, if any, and no conversion of non-agricultural areas to agricultural use;
- 9. Activities that adversely impact threatened or endangered species;
- 10. **Any subdivision of the land.**<sup>3</sup>  
(*All of the above- as interpreted by the easement holder or anyone, or any group who purchases said easement in the future.*)

## So What Is Left Of Your Property Rights?

1. The right to observe, maintain, photograph, fish, hunt, introduce and stock native fish or wildlife on the property, to use the property for non-commercial hiking, camping, and horseback riding, **in compliance with federal, state and local laws concerning such activities;**
2. The right to conduct prescribed burning on the property, **provided that the grantor obtain and comply with the appropriate authorization from the regulatory agency having jurisdiction over this activity;**
3. The right to harvest timber or other forest products **in accordance with an approved forest management plan;**
4. The right to mortgage the property; (*Common sense dictates that a parcel of land with clouded property rights is worthless.*)
5. The right to use, maintain, repair, and reconstruct, **but not relocate or enlarge**, all existing structures, fences, roads, ponds, drainage ditches and other facilities on the property.

**As you can see, the terms of these easements are intentionally written in a very vague way, subject to interpretation by the easement holder or the courts. But the responsibility and expense to maintain the property as the easement holder demands is very specific and is "forever."**

**The land owners and their heirs, become mere surfs, slaves to their own property and subject to the wishes of the easement holder- they are caught in the Conservation Easement Trap.**

**Don't Let This Happen To YOU!**

1. <http://www.cals.ncsu.edu/wq/lpn/uniform.htm>
2. Old Lyme, Connecticut [http://www.oldlyme-ct.gov/Pages/OldLymeCT\\_BComm/Easement%20Monitoring-OL.pdf](http://www.oldlyme-ct.gov/Pages/OldLymeCT_BComm/Easement%20Monitoring-OL.pdf)
3. <http://edis.ifas.ufl.edu/FR149>



## Conservation Easements Are a Trap



As you read this, hundreds of well meaning land owners are losing their homes, their land, and their children's inheritance because they fell for the false promises made to them by government agencies and environmental groups. Thousands more face a similar fate!

Most of these endangered property owners believed that they were preserving their land for future generations. Some believed it was a way to help their children survive in the farming or ranching business by getting badly needed operating cash in these troubled times.

All loved their land and their way of life and dreamed of saving them both from destruction. But now their land and their dreams are being brutally taken from them.

**They are caught in the "Conservation Easement Trap."**

Those who believe that they will be allowed to continue living on the land or get a tax write-off or a “tax credit” (which they can sell to others to generate cash) are easy targets for this massive, well planned land grab scheme. This scheme is designed to steal the rights to your land, deprive you of its use, and eventually transfer title to either a government agency or an environmental group.

**As an example:** In Colorado right now hundreds of land owners who used an easement plan sanctioned by both the state and Federal governments, are being threatened with losing everything they own.

You see, once the state of Colorado realized how much revenue they would lose because of these land trusts, they found a way to back out of the deal. When Colorado backed out, this gave the IRS an excuse to disallow all tax deductions given to land owners and also disallow all tax credits sold on these easements.

The taxes, penalties, and fines assessed by the IRS amount to more than the present value of the land. Plus, individuals who bought “tax credits” from the land owners are suing to recover their losses.

With title to the land so clouded, no individual will buy it, no bank will loan on it, and it has no economic value to anyone except the government or the environmental group who hold the easement. The IRS will either take the land or sell it at auction to satisfy the tax debt.

By law, the title holder CANNOT have a conservation easement on his own land. Therefore, should the easement holder also gain title to the land- the easement automatically goes away!

In the end, the land owners will have lost everything and the easement holder will have gained clear, un-encumbered title to this very valuable property.

The Uniform Conservation Act was created in 1981 and recommended for use by all states by the National Conference of Commissioners on Uniform State Laws.<sup>1</sup>

A **conservation easement** is an encumbrance — sometimes including a transfer of usage rights (easement) — which creates a legally enforceable land preservation agreement between a landowner and a government agency (municipality, county, state, federal) or a qualified land protection organization (often called a "land trust"), for the purposes of conservation. It restricts real estate development, commercial and industrial uses, and certain other activities on a property to a mutually agreed upon level. The property remains the private property of the landowner.

The decision to place a conservation easement on a property is strictly a voluntary one where the easement is sold or donated. The restrictions of the easement, once set in place, "run with the land" and are binding on all future owners of the property (*in other words, the restrictions are perpetual*). The restrictions are spelled out in a legal document that is recorded in the local land records and the easement becomes a part of the chain of title for the property. Thus, a potential buyer of the property would limit his offer to the value of the few remaining property rights.

### Violations

The following is common policy for governments (local & state) that enacted the model Conservation Easement Act:

“An easement violation may be discovered through a visit or **by casual observation or reported by a third party**. The violation may have been caused by the property owner, an adjacent property owner or a third party trespasser.”<sup>2</sup>

*(Consider carefully the last sentence – an action by a neighbor or a trespasser could be declared a “violation” with you as the responsible party.)*

Serious violations, the policy concludes, prohibit construction or subdivision, (dividing your property i.e. to give a lot to a child) excavation, and timbering without an approved forest management plan. All of the forgoing “require a swift and definitive response.”<sup>2</sup>

Rights Granted to the Grantee (easement holder) MAY include but is not limited to the following”

“1.The right to preserve and protect the conservation values of the property;

2. The right to enter the property at reasonable times in order to monitor compliance with the agreement;

3. The right to prevent any activity on or use of the property that is not consistent with the purpose or provisions of the easement and to require the restoration of areas or features of the property that may be damaged by inconsistent activity or use **at the grantor's (owner's) cost**;

4.The right of first refusal to purchase the property in fee if the grantor proposes to sell the property to a third party other than a lineal descendant, and the right to purchase the property from the estate or trust of the grantor (void if easement is a charitable donation for no consideration);

5. The right to be indemnified by grantor for any and all liability, loss, damage, expense, judgment or claim arising out of any negligence, willful action or activity resulting from the grantor's use of the property or use of the property by the grantor's agents, guests, lessees, or invitees.”<sup>3</sup> *(The easement holder has no liability, it all falls on the property owner.)*