

## **Sample Restrictions in Conservation Easement Agreements**

Entering a conservation easement agreement entails granting certain rights over one's land. The rights conveyed are reflected in an agreement which limits or restricts land use to preserve the environmental character of the land into the future. Some common restrictions are outlined below.

The scope and nature of land use restrictions under a conservation easement are negotiable, so long as the purpose of the easement falls is not undermined. Sometimes there will be clear prohibitions while in other instances there will be the ability to undertake activities with the written consent of the other party.

Once a conservation easement agreement is registered on the land title the restrictions only apply to the parties to the agreement or the successors to the agreement (i.e. future landowners).

Restrictions focused on limiting third party rights, typically the government, will not be enforceable. For example, a restriction in a conservation easement agreement prohibiting oil and gas activity on the land has no bearing on the rights granted to governments or administrative bodies through other legislation that allow oil and gas activities to be conducted on private land. A conservation easement agreement can't restrict the legal rights of government to mandate a land use (or to expropriate land).

This can be contrasted with instances where there is a government issued permit or authorization. A prime example of this is where a municipality issues a development permit or changes in permitted land use. These types of government "permissions" don't overcome the restrictions that have been agreed to in the conservation easement agreement.

The enforcement of easement restrictions will typically involve going to the Alberta Courts to seek an order to remedy the violation of the agreement.

### **Sample Restrictions**

#### **Subdivision**

Subdivision is the municipal regulatory process which allows one to break larger parcels of land into smaller ones, typically with the intent of changing the use of the subdivided land. Limits or other restrictions on subdivision are focused on keeping the parcel that is subjected to the conservation easement whole in an effort to maintain its character and to minimize enforcement and maintenance costs that may result from having a conservation easement carved into pieces and sold off to different owners.

Subdivision limitations are often a starting point for areas where agricultural land preservation is the purpose as this maintains the land base for a single purpose and ensures the land isn't carved out for residential or other urban developments.

Some agreements will allow for a single and limited subdivision to allow for the transfer of property to a family member that may wish to stay on the property.

#### **Buildings**

A conservation easement agreement may also seek to restrict the number and or siting of buildings on the land. This often relates to the intended land use and limits the ability of the landowner to expand buildings on the land that may be detrimental to the purposes of the easement.

Agreements may allow for additional outbuildings or residences depending on the foreseeable needs of the land in light of the purpose of the conservation easement.

### **Draining water on the land**

The drainage of water bodies or redirection of watercourses is often restricted in the conservation easement agreement as water is often essential to habitat and biodiversity. The potential for drainage of these watercourses may vary where the land is used for agricultural purposes (although provincial regulations under the *Water Act* may govern how and when water bodies are used or diverted).

Depending on the purpose of the easement the landowner and qualified organization may allow for diversions of water for specified purposes, such as household or agricultural use (with or without specified written permission). Also, if hydrology of the area in which the conservation easement is situated has been changed (naturally or by humans) there may be the need to augment water bodies on the land (with the proper approvals under the *Water Act*.)

### **“Breaking” or disturbing the land**

Conservation easements will often limit changes to the landscape that may impact the general nature of the landscape, such as hydrogeology, topography and aesthetics. This limitation will typically include restrictions on the “breaking” or disturbing of the land. This approach will often entail preservation of soil and related vegetation in an undisturbed state.

The conservation easement agreement may refer to a management plan to outline the maintenance and restoration of land under the easement. The preservation and management of vegetation is often dealt with in additional sections dealing with permitted and restricted land use.

Agricultural lands may also have similar limitations where they are used for grazing however such a restriction would be untenable for land that included some cultivated areas.

### **Fencing**

Fencing restrictions in conservation easements may be included to maintain wildlife movement across the landscape. In some instances no fencing may be allowed or specific types of fences may be allowed. The placement and extent of fencing allowed on the property may also be prescribed.

The maintenance of fencing may also be required in some instances to protect sensitive habitats or aquatic areas from livestock use.

### **Access – roads and trails**

Restrictions on where any roads or trails may be constructed will typically be included in the conservation easement agreement to limit the impacts of these roads and trails, including invasive species, fragmentation and augmentation of hydrogeology. In many cases the agreement may allow

for maintenance of existing and surveyed roads while in others additional roads may be allowed with their location being prescribed.

### **Public Access**

The intended use of the conservation easement lands and their relative susceptibility to disturbance will often require some restrictions or prohibitions around public access. Public access to the conservation easement land may run the spectrum from being completely prohibited to being unrestricted. If access is permitted the type of access, i.e. foot, equestrian, cycle or motorized, will typically be prescribed in the agreement. The purpose of access should also be stated in the agreement, as hunting, berry picking, or wildlife viewing all carry with them specific considerations for management.

Managing impacts from access, through trail restoration or maintenance and management of invasive species, may also be a focus of the agreement or an attached management plan. Finally, where public access is permitted there is the need to ensure that sufficient insurance is provided and to outline who is responsible for the insurance.

### **Timber harvest**

As forests and trees play a key role in maintaining biodiversity there is usually good reason to manage timber harvest. Restrictions on timber harvest may be included in the conservation easement agreement for various purposes: management of forest age and habitat, fire risk, or allowance of sustainable timber harvesting. The agreement may include reference to a timber harvest plan or related management plan to ensure timber harvest does not undermine the easement purpose.

Depending on the purpose and goals of the landowner and grantor there may be a preference for natural forest succession rather than permitting of limited or ecologically sustainable harvest.

### **Mining or excavations**

Typically mining for gravel or other excavations will be prohibited on conservation easement lands. These activities are often at odds with any statutory purpose for conservation easements (environmental, agricultural, and recreational) although there may be instances when archeological or research related excavations are allowed.

### **Waste management**

The management of waste generated on a parcel of land will often be the subject of some restrictions in the conservation easement agreement. This is particularly the case in instances where there is environmental hazardous wastes generated and/or stored on the land, even if it is not directly stored on the conservation easement lands.

Refraining from allowing the release of garbage or other substances onto conservation easement lands is also often included as a restriction in an easement agreement.

### **Agricultural related limitations**

Where a conservation easement is granted on agricultural lands for agricultural purposes there may be additional considerations around land management.

**i) Animal density**

The ecological carrying capacity of a land base for a given species of livestock will vary. Limiting the number of animals or density of animals that will be permitted on the land may be required to ensure that the land base is not degraded. The animal density allowed within the conservation easement area is typically based on maintaining land (and forage) quality as well as limiting manure and other waste related concerns.

**ii) Releases or use of specified substances**

Many agricultural practices have both intentional and accidental releases of substances that may be detrimental to environmental quality. Intentional application (or release) of fertilizers, pesticides and manure may be the subject of management plans or limitations around water bodies or other sensitive habitats.