



Great Peninsula Conservancy

Protecting our lands and waters for generations to come



Conservation Easement Landowner Handbook

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An Introduction to Great Peninsula Conservancy

Great Peninsula Conservancy (GPC) is honored to partner with you to protect your land for future generations. As cooperative partners, we understand that caring for a conserved property can be a complicated undertaking; therefore, this handbook is provided to:

- Help answer questions you may have about your conservation easement (CE);
- Help you understand your rights and responsibilities as the owner of a CE property; and
- Outline the assistance available from GPC to help you steward your property's unique features in compliance with the terms of the CE.

What is Great Peninsula Conservancy?

The mission of Great Peninsula Conservancy is to preserve the natural habitats, rural landscapes, and open spaces of West Puget Sound. We are an accredited land trust, and to date, we have conserved over 11,000 acres of evergreen forests, salmon streams, farms, marine shorelines, and community parks.

Great Peninsula Conservancy was formed as a 501(c)(3) charitable organization in 2000. With decades of conservation accomplishments in the region, GPC is a trusted conservation leader. We work in collaboration with community groups, local governments, tribes, and landowners, providing the tools and expertise to preserve forever the special landscapes of the Great Peninsula region.

What is a Land Trust?

A land trust (like GPC) is a private, non-profit organization with a mission to help landowners conserve properties with outstanding natural, agricultural, and scenic values. Land trusts typically do this by holding conservation easements and ensuring that the terms of the easements are being followed. The land trust works with the landowner to create the conservation easement document and agrees to care for, or “steward”, the conservation easement forever.

Stewardship Staff

Our Stewardship Team works closely with landowners to answer questions about their conservation easements and ensure that these agreements are being followed. Through our Stewardship program, we:

- Help landowners understand how their conservation easement applies to their property;
- Visit every protected property annually;
- Review and approve major activity requests; and
- Take steps, when necessary, to remedy and defend any violation of a conservation easement.



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Conservation Easement: Definition & Benefits

What is a Conservation Easement?

A conservation easement (CE) is a voluntary legal agreement between a landowner and a land trust or government entity which contains permanent restrictions on the use or development of land in order to protect certain values of the property. The conservation easement is recorded in the county records just like a Deed, and stays with the property forever, regardless of who owns the land. The CE is a legally binding agreement that ensures the land is permanently protected through all future changes in property ownership.

Because individual landowners have different needs and goals for the use and conservation of their property, each recorded CE contains unique terms which reflect a balance between protecting the land and its resources, and the personal objectives of the landowner granting the CE. The terms of the CE are legally enforceable by the land trust as the holder of the CE, and it is the obligation of the land trust to ensure that the purposes of the CE are honored in perpetuity.

Benefits of a CE to a Landowner

- Peace of mind knowing the land will remain protected forever;
- A possible federal tax savings: donated CEs may be considered a charitable donation of property;
- Connections to local, state, and federal resources, funding and/or support for habitat restoration, management, and enhancement.

Baseline Documentation Report

A Baseline Documentation Report (BDR) must be prepared for every new CE. The goal of the BDR is to document the physical conditions and conservation values of the property as they exist at the time the land comes under the protection of a CE.

Documentation includes narratives, photos, and maps, that show the condition of the biological and ecological resources on the land as well as land uses, infrastructure, and other improvements on the property. Capturing land uses and infrastructure is important for the purposes of documenting reserved rights and prohibited acts in the CE.

Before the CE can be recorded, the BDR must be reviewed and acknowledged by both the landowner granting the CE (Grantor) and GPC as holder of the CE (Grantee/Holder). The CE grantor and all successive landowners will receive a copy of the BDR with the CE for their permanent records. It is recommended that landowners keep these materials where they can be easily referenced.

The BDR gives GPC the ability to assess changes on the property over time and helps provide a “baseline” for decisions regarding long-term protection and legal enforcement of the CE. As landowners exercise reserved rights and changes occur on the land, GPC will update the BDR as necessary.



Annual Monitoring Visit

After GPC accepts a CE, we are legally responsible for ensuring your property's conservation values are protected forever. Monitoring is an important responsibility: it is required by Federal law and as a part of our Land Trust Alliance Accreditation. Monitoring, conducted by GPC staff or trained volunteers, is the regular inspection and documentation of the condition of a property protected with a CE. The purpose of monitoring is to document the condition of the property over time so that GPC can ensure that the conditions of the CE are being upheld. To meet this obligation, we:

- Visit your property at a minimum once per calendar year;
- Review relevant permissions and restrictions for activities and uses on the property, and evaluate the property to determine whether those terms are being followed; and
- Produce an annual monitoring report that summarizes the visit and documents any issues observed and/or changes to the property.

Prior to each year's visit, we will contact you to schedule a mutually convenient day and time to monitor your property. We encourage you to participate in the visit, but you are not required to be there. If you choose not to be at the site visit, all we require is that we have access to the property. If attempts to contact you are unsuccessful, we must still visit your property to fulfill our obligation as the CE holder. To ensure timely communication, please notify us of any changes to your contact information as well as your preferred method for communications.



CE Violations & Enforcement

GPC's careful and consistent monitoring and enforcement of the provisions of every CE we hold are critical to ensuring that the conservation values entrusted to us are protected forever. We recognize that most CE violations may not be intentional and may result from landowners, neighbors, or other parties either being unaware of the CE terms or not understanding them. In the event a violation does occur, we are legally obligated to uphold the easement, but are fully committed to working with you to resolve violations amicably and always seek to negotiate a voluntary resolution.

Please contact us with any questions. Maintaining regular communication and constructive working relationships help prevent costly CE violations as well as irreplaceable damage to your property's conservation values.

Exercising Reserved Rights

Every CE document outlines basic rights that the landowner retains. Certain reserved rights, however, require prior notification to and/or written approval from GPC. The purpose of requiring prior notice for certain activities is to afford GPC staff an opportunity to ensure that the activity or use is designed and carried out consistent with the terms of the restriction. If you are unsure whether notification is required, it is always advisable to check in with GPC staff before beginning your project to avoid an unintentional violation.

When GPC's written approval is required for a proposed activity, advance notice must be given (usually 30 or 60 days). Please provide us with sufficient detail of the nature, scope, design, location and timetable for your project. If we find that the proposed activity is inconsistent with the terms of your CE, we cannot issue approval; however, we are committed to working with you to negotiate an alternative plan that will ensure the protection of your property's conservation values.

You are responsible for being aware of and complying with all laws on your property. If the law requires permits or notification of any government agencies before undertaking an activity, you must complete those steps before going forward. GPC is responsible only for evaluating your plans with regard to the easement area. Likewise, when government officials evaluate your plans, they will not consider whether your plans meet the terms of the conservation easement.

Changes in Ownership

The conservation easement stays with the land even if you decide to sell or transfer the property. This means the next owner will need to be aware of how it works. Contacting us before selling or transferring your property is very important to this process. Having an open conversation with your realtor and any potential buyers and/or lessees about the CE on your property is critical to ensuring the perpetual protection of your land. It is very important that everyone involved understands the significance of the easement: why it exists, how it works, the specific restrictions and allowances, and our involvement through monitoring and enforcement.

Most CEs contain the requirement that you notify the Land Trust before any conveyance; likewise, the transfer deed should make reference to the recording information of the CE. Please check your conservation easement to avoid an unintentional violation. Even if these terms are not required in your CE, we ask you to notify us as a courtesy.

We also ask you to let us know if you're planning to transfer legal ownership within your own family, to a real estate trust, or to a limited liability corporation, as we need to maintain records of the correct legal ownership of, and contacts for, all CE properties.

Changing / Removing a CE

Since CEs are designed to be permanent, changing or revoking them is difficult. However, there are limited conditions under which a CE may be amended. Such situations include:

- Clarifying or strengthening the CE's language; or
- Adding acreage under the CE's protection.

A CE amendment must go through the same approval process as a new CE, meaning both the landowner and the CE holder agree to the new or updated terms and restrictions. A CE amendment will only be considered and approved when the amendment will not result in any diminishment in protection of the CE's purposes and conservation values.

The amendment process is very time intensive, and any request by a landowner to amend a CE may require payment to cover associated costs (e.g. appraisal, land surveying, recording fees, etc.).





Anatomy of a CE

Note that the language, terms, and content of your individual conservation easement (CE) supersede the following. These descriptions are provided to give you a general outline of a model CE along with examples of specific CE language. If you have specific questions about current or future uses, permitted structures, and/or proposed land management activities on your protected property, please consult your CE document and GPC staff.

Also note: GPC easements may not follow the exact order or detail, as described below. Easement language and structure has changed over time; however, these components are universal and likely found within your individual document.

Recitals

The recitals outline the basic premise of, and purpose for, the CE. It is here that more information is provided about the Grantor and the Grantee. Facts about the property are stated, including location, acreage, and any activity or use zones that may apply. Maps are often referenced as exhibits, providing a visual reference to what is described. Recitals identify the conservation values of the property and justify why the stated values should be protected with a conservation easement. This section also outlines any public benefit from protecting the property.

Granting Paragraph

This section states the grant of conservation easement, the owner intent, the acceptance of the Grantee/Holder (GPC) of the conservation easement, and any details pertaining to access easements, water rights, and other rights under existing easements.

Purpose Paragraph

This section states the purpose of the easement, which is typically to preserve and protect, and/or enhance, the conservation values of the identified property, as detailed in the Recitals and Baseline Documentation Report and set forth again in this section. The Grantor's purposes in granting the easement and intent to confine the use of the property to activities or uses consistent with the easement is also generally included.

Prohibited Uses & Reserved Rights

The conservation easement has separate sections for prohibited activities and reserved rights. Both sections must be read together to understand the intent and impact of the CE. An activity may generally not be allowed under Prohibited Uses, but could contain some exceptions within Reserved Rights. Easement holders should refer to their CE to understand the specific prohibitions and reserved rights for the property, as well as activities requiring advance notice to, or written approval from, GPC. Refer to the terms outlined in the Notice & Approval section below to understand notification procedures.

Examples of prohibitions or limitations that *may* be found in a CE:

- No subdivision or division of the property;
- No residential use or development of the property;
- No cutting, removing, or destroying of living native trees and other native vegetation;
- No new road installation, unless for current and future reserved uses;
- Any other use or activity inconsistent with the purpose of the CE, or which would materially impair the conservation values on the property.

Examples of reserved rights that *may* be found in a CE:

- Right to convey;
- Habitat restoration and enhancement;
- Agricultural uses, such as cultivation or grazing;
- Trail construction and maintenance;
- Recreational activities.

Notice & Approval

This section provides a detailed outline of the process and timeline for exercising reserved rights in the easement where exercising those rights requires written notice to GPC and/or written approval from GPC. Set forth in this section is an explanation of why notice is required, when it is required, and how to properly give notice, including what information is likely to be needed by GPC in order to make a timely assessment and determination on the request. Easement holders will need to refer to their reserved rights section in the CE to determine when prior notice and/or approval from GPC is necessary. If a requested activity or use is approved by GPC, staff may conduct pre- and post-work site visits to document the activity. All written approval requests should be sent to GPC staff by mail and/or email, according to the terms of the Notice and Approval section of the CE.

Rights of the Land Trust

This section gives GPC the ability to enforce the terms of the CE. Enforcement includes the right to enter a CE property to monitor and enforce the terms of the CE. Enforcement also includes the right to correct violations, and GPC staff will follow the provisions of this section if we believe there is a violation to the terms of the CE.

Remainder Paragraphs & Execution Pages

This portion of the CE recites legal provisions containing important language necessary to make the CE valid and enforceable—similar to what is found in most contracts and agreements. Easement holders must refer to their CE to understand exactly what terms apply. As with any part of the CE, should questions arise about the terms of the agreement, feel free to ask our staff for basic information; however, for substantive legal understanding of the terms or legal advice, please consult an attorney.

Exhibits

Exhibits are found at the end of the CE. Exhibits are separate documents that get incorporated into the agreement by reference within the CE's terms. For example, maps or surveys depicting the protected property, including designated areas excluded from the CE, like building envelopes, or special use areas, like agricultural zones.

Assistance Available to Landowners

GPC's primary duty in relation to your protected property is documenting its conditions over time and ensuring compliance with the CE terms. In addition to our annual monitoring visits, we are always available to help you better understand your CE, how its terms may impact any future land management decisions, and whether or not certain activities are permitted. Additionally, staff are available to provide general advice on issues that may affect your property's conservation values, including managing invasive/non-native plant species and wildlife habitat restoration. Staff can also provide assistance identifying resources and providing connections to contractors and grant-funding opportunities to support management of your property. Below are some local/regional resources.

Natural Resources Conservation Service (NRCS)	500 Pacific Ave Suite 301 Bremerton, WA 98337	Sean Mcdonagh sean.mcdonagh@usda.gov (360) 813-9707	Local service center for Kitsap and Mason county
Natural Resources Conservation Service (NRCS)	1011 E Main Ave Suite 306 Puyallup, WA 98372	Lynn Khuat lynn.khuat@usda.gov (253) 845-9272 Ext. 3	Local service center for Mason and Pierce county
Kitsap Conservation District	10332 Central Valley Rd Poulsbo, WA 98370	kcd@kitsapcd.org (360) 204-5529	Technical assistance for landowners in Kitsap
Mason Conservation District	450 W Business Park Rd Shelton WA 98584	www.masoncd.org (360) 427-9436	Technical assistance for landowners in Mason
Pierce Conservation District	308 West Stewart Ave. P.O. Box 1057 Puyallup, WA 98371	www.piercecd.org (253) 845-9770	Technical assistance for landowners in Pierce
Washington State University Extension Forestry Program	Kevin Zobrist (Pierce) Molly Darr (Kitsap)	kevin.zobrist@wsu.edu molly.darr@wsu.edu	Research-based education & resources for forest landowners
Washington Association of Conservation Districts (WACD) Plant Materials Center	16564 Bradley Road Bow, WA 98232	pmcsales@gmx.com (360) 757-1094 https://wacdpmc.org/	Nursery for bulk native plant orders
Northwest Natural Resource Group	Kirk Hanson (Olympia) Jaal Mann (Tacoma)	kirk@nng.org jaal@nng.org https://www.nng.org/	Ecological forestry management consulting in Puget Sound
Sound Native Plants	PO Box 86569 Portland, OR 97286	info@soundnativeplants.com (360) 352-4122 https://soundnativeplants.com/	Ecological restoration specialists (South Sound)

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