

AN ACT AMENDING THE CONSERVATION RESTRICTION AND AGRICULTURAL PRESERVATION STATUTES

Sponsor: Senator Stephen Brewer (D-Barre)

Challenge

As land values escalate and public funding for open space protection is constrained by general obligation bond spending, the use of conservation restrictions has become an increasingly important land protection tool in Massachusetts. Nearly half of the 140,000 acres of open space protected in Massachusetts in the last three years has been achieved through conservation restrictions.

Conservation restrictions (CR) enable a landowner to protect natural resources on his/her property while retaining full ownership and the ability to sell or convey the property, subject to the terms of the restriction. A CR is a voluntary, legally binding, permanent agreement between a landowner (grantor) and a holder (grantee), usually a public agency or a private non-profit land conservation organization. The grantor agrees to limit the use of his/her property for the purpose of protecting certain conservation values. The conservation restriction is recorded at the Registry of Deeds and runs with the title. Certain income, estate or real estate tax benefits may be available to the grantor of a conservation restriction. Agricultural preservation restrictions (APR) are a certain type of CR, which is acquired by the Department of Food and Agriculture and is specifically designed to help farmers protect the agricultural viability of their land.

In the last two years, state environmental agencies have launched the "Private Forest Lands Initiative" utilizing "forestry APRs" to protect land from development while encouraging forest management, biodiversity and watershed conservation. Since 1999, nearly 9,000 acres have been protected by this new program.

In Massachusetts, all conservation restrictions held by municipalities or private non-profit land conservation organizations must be approved by the Secretary of the Executive Office of Environmental Affairs (EOEA) to assure "public benefit." Massachusetts is the only state in which conservation restrictions must be approved by the municipality involved and by the agency of the Commonwealth designated in the statute for that particular form of restriction.

Solution

This legislation will strengthen conservation restrictions and agricultural preservation restrictions as tools for conserving land. The bill would:

- Require that no CR could be released without a two-third vote of each branch of the legislature. This mandate is consistent with EOEA policy and reinforces requirements proposed in legislation filed this session to ensure no-net loss of conservation land under Article 97 of the Amendments to the Constitution (see An Act to Protect the Natural and Historic Resources of the Commonwealth);
- Clarify that the common law doctrine of "merger of interests" does not apply to CRs. This would remove the real possibility that, under the merger doctrine, the restriction would disappear or merge with the land title if a holder of the restriction (the entity responsible for enforcement of its provisions) later becomes the owner of the restricted parcel.
- Clarify the standards of taking of restrictions by public utilities as authorized by the Department of Telecommunications and Energy. These clarifications are the result of successful negotiations with the utility industry and provide a clear and well-established

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mechanism for releasing restrictions that lie in the path of a pipeline or transmission line corridors while ensuring that the broad conservation values of these restrictions are respected.

- Authorize the Commonwealth to co-hold APRs with land banks, private non-profit land conservation organizations, and other charitable corporations (as well as municipalities which are already so authorized) in exchange for their assistance to the Commonwealth in funding, acquiring, or enforcing these restrictions.
- Clarify and simplify the definition of APRs to enable the program to tailor the specific terms of each restriction to the particular circumstances of each property involved.

Benefits

The use of conservation restrictions benefit the property owner, municipality, and the Commonwealth. Property owners receive a federal income tax deduction when they place their land under restriction. Some communities in Massachusetts are suspicious of public purchases of land for conservation, arguing that such land should remain productive and not be taken off the municipal tax rolls. Limited available resources compel state agencies to stretch public dollars for the greatest impact.

- The key advantage of a conservation restriction is its adaptability to the needs and wishes of a property owner and the special conservation features and values of his/her land. A restriction may prohibit all activities that change the natural condition of the property, or it may allow agricultural or forestry activities, or even limited development.
- The Internal Revenue Service allows a property owner to deduct from taxable income the value of a donated restriction (up to 30 percent of adjusted gross income in the year of the gift, and up to five successive years thereafter) as a charitable donation.
- The Commonwealth saves between 10-50% of the full price of protecting a parcel of land when a CR is purchased vs. fee simple acquisition.

By strengthening the durability of CRs, this legislation will help enhance innovative use of CRs as a land protection tool. Enabling land trusts and other eligible organizations to co-hold APRs with the Department of Food and Agriculture will assist the Department in negotiating, funding, and enforcing these restrictions.

For more information about the bill, contact Christopher Hardy, Mass Audubon's Director of Legislative Affairs, at 617-523-8448 or chardy@massaudubon.org.

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