

Scouting America Local Council Sale of Development Rights - FAQs

What is the sale of development rights?

Local councils that own real property in the form of camping land may be able to sell the right to develop the land to a governmental or nonprofit conservation organization through a permanent restriction in a conservation easement, held by a land trust for monitoring and enforcement.

What is a conservation easement?

A conservation easement is a type of deed that permanently restricts the future use and development of land for conservation purposes.

What is the difference between the sale of development rights and a conservation easement?

The sale of the development rights is memorialized in a written contract. The conservation easement is a deed that records the restrictions of the development rights.

What is a land trust?

A land trust is a tax-exempt nonprofit legal entity that is regulated by the Internal Revenue Service rules and is qualified to hold, monitor, and enforce conservation easements.

Who purchases development rights?

Some governmental agencies and conservation organizations buy development rights for ecologically significant and sensitive lands to preserve and protect the land for conservation purposes for future generations.

What makes land desirable for the sale of development rights?

As land becomes more valuable for development, the difference in land value between undeveloped and developed land drives land prices. When undeveloped land held by a local council has environmental significance, the council may be able to sell the development rights at a determined price between the value of the undeveloped land and the future land value for the best and highest use.

How is the value of the development rights determined?

A qualified appraiser typically using a comparison method will determine the value of the development rights in a conservation easement.

What does environmentally significant or sensitive mean?

Government agencies and conservation organizations have an interest in preserving land that has unique features related to the environment, particularly rare or endangered species of plants and animals, wildlife habitat and fisheries, water collection and retention related to water quality, and migration corridors that can link one environmentally significant or sensitive area to another.

What is the advantage of selling development rights?

The local council can generally continue to use the property as it has in the past while receiving a payment for the future potential development rights.

What are the disadvantages of selling the development rights?

The downsides include restrictions on any changes of use of the property and the construction of new program areas and buildings. The restrictions are permanent and binding in the future.

Are there foundations that provide grants to local councils for the sale of development rights?

There are foundations, typically state and local, that fund the technical assistance, environmental studies, legal expenses, and related costs. The purchaser of the development rights would bear most of the expenses, but not all.

How does a land trust monitor and enforce a conservation easement?

The land trust will require a baseline report that includes maps, aerial and ground photographs, the survey, appraisal, and environmental studies to document the environmental and conservation purposes. The land trust will make an annual onsite visit to compare the property to the baseline survey. The land trust will make a visit as often as necessary if there is a complaint or compliance issue. The land trust may take the local council to court to enforce a restriction.

Is there an IRS reporting requirement for conservation easements?

The local council will have to report certain information about a conservation easement on IRS Form 990, Schedule D. See the instructions for Schedule D. Go to: <https://www.irs.gov/pub/irs-pdf/i990sd.pdf>

Is there a sample conservation easement?

Scouting America does not have a template. Every situation is unique, and the local council should engage qualified licensed legal counsel with experience in drafting or reviewing conservation easements. A good example of a conservation easement can be found at: <https://www.reginfo.gov/public/do/DownloadDocument?objectID=50679501>

What is the first step to selling a development right?

The local council should have an up to date conservation plan: Go to: <https://www.scouting.org/wp-content/uploads/2019/02/Conservation-Plans-for-Camp-Properties.pdf>

Are there other resources available to local councils?

Contact your local chapter of The Nature Conservancy. Go to: <https://www.nature.org/en-us/about-us/where-we-work/> or Attorney Russ McNamer in the Scouting America Legal Department: russ.mcnamer@scouting.org.