



UPPER PENINSULA LAND CONSERVANCY

Policy 9E : Easement Drafting *Standard 9E, 2017 Land Trust Alliance Standards and Practices; 2021 Accreditation Requirements Manual*

Board Approved: March 14, 2017
Board Revision Approved: April 14, 2022

PURPOSE

The language in the conservation easement is what ensures that the appropriate rights are conveyed and the conservation purposes are achieved. The purpose of this policy is to ensure a clear and precise document that enables the parties to understand their respective rights and responsibilities. From initial negotiation through final drafting, a conservation easement should reflect the unique characteristics of the property; the needs of the landowner, and the needs and policies of the Upper Peninsula Land Conservancy (UPLC).

This policy outlines requirements for accompanying procedures, so that they align with Land Trust Alliance Standard 9E:

1. *For every conservation easement,*
 - a. *Individually tailor it to the specific property*
 - b. *Identify the conservation values being protected*
 - c. *Allow only uses and permitted rights that are not inconsistent with the conservation purposes and that will not significantly impair the protected conservation values*
 - d. *Avoid restrictions and permitted rights that the land trust cannot monitor and enforce*
 - e. *Include all necessary and appropriate provisions to ensure it is legally enforceable*

2. *Review, on the land trust's own behalf, each potentially tax-deductible conservation easement for consistency with the Treasury Department regulations (U.S.C. §1.170A-14), especially the conservation purposes test of IRC §170(h)*

REFERENCES

- 1) Land Trust Standards and Practices 2021 · Standard 9: Ensuring Sound Transactions
- 2) Land Trust Accreditation Commission Handbook 2021 pages 19-26.



Please refer to the accompanying [Procedure 9E](#), for guidelines regarding execution of this policy.

POLICY

Summary:

It is the policy of UPLC to create sound, enforceable, conservation easements which protect the conservation values of the property and serve the public benefit.

- 1) The conservation easement shall:
 - a) Define the property's conservation values, the rationale for protecting those values, and the purpose(s) of the easement.
 - b) Describe the major resource, or resources, on the property that is specifically protected by the easement, such as natural, scenic, historic, or cultural resources.
 - c) Describe the public benefit(s) provided.

- 2) The conservation easement shall:
 - a) Define permitted uses, restrictions, and reserved rights that will not significantly impair the conservation values.
 - b) Define reserved rights that are specific and not so broad as to allow the ability to negate the terms of the easement.
 - c) Include only restrictions that are necessary to protect the conservation values of the property.
 - d) Avoid restrictions that cannot be monitored or enforced.
 - e) Clearly define special uses, building envelopes, and other areas, so that they can be easily identified on the ground. Include criteria for the review and approval of activities in these areas.
 - f) Give UPLC control over the future exercise of reserved rights by designating when and how UPLC is required to review or approve the exercise of such rights, or permitted activities.
 - g) Use measurable standards when possible and refer to generally accepted standards when using measurable standards is not possible.
 - h) Provide that the property owner notify UPLC, in writing, before exercising any reserved rights that may have an adverse impact on the conservation values protected by the conservation easement.



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- 3) In crafting the conservation easement, UPLC shall:
 - a) include all necessary and appropriate provisions to ensure it is legally enforceable and ethically crafted.
 - b) obtain legal review of the easement in final draft form before approval may be considered.
 - c) review each potentially tax-deductible conservation easement against United States Treasury Department Regulations ((U.S.C. Section 1.170A-14 and the conservation purposes test of IRC Section 170(h).
- 4) The UPLC Board of Directors (Board) must approve the easement before execution.

REVISIONS

This policy should be reviewed by the Board on an annual basis. Any amendments must be approved by vote of the Board and will require a supermajority to be changed.

This policy may be amended or repealed, and new related policies may be adopted, from time to time by the Board, except that no change in the policies will affect obligations accepted by UPLC for funds or properties donated prior to the change, unless such change is approved in writing by the donor or donors of such properties, interests, or funds.

The Board may make reasonable exceptions to the policy in particular cases by Board vote with simple majority, and will document the reasons accordingly in the minutes of the meeting where the decision was made and copies will be placed within the appropriate files in accordance with Recordkeeping policies