



# NORTHCOAST REGIONAL LAND TRUST

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## CONSERVATION EASEMENTS

### A Guide for Landowners

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*We have compiled this packet of information to help you understand what a conservation easement is, and to assist you in ascertaining whether or not a conservation easement is appropriate for you and your property.*

*The Northcoast Regional Land Trust's staff is available to discuss any questions or concerns you may have.*

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# The Northcoast Regional Land Trust

*Keeping wild and working landscapes intact for community benefit*

## **OUR MISSION:**

The Northcoast Regional Land Trust is dedicated to the protection and economic viability of working landscapes, farms, forests, and grazing lands, and to the preservation and protection of land for its natural, educational, scenic and historic values. We work with landowners on a voluntary basis to promote stewardship of Northern California's healthy and productive resource base, natural systems and quality of life.

**OUR VISION:** To create a sustainable community with a vibrant economy and landscape.

**WHO WE ARE AND WHAT WE OFFER:** Founded in 2000, the Northcoast Regional Land Trust (NRLT) comprises a broad cross section of community members including people with backgrounds in land use planning, ranching, farming, fisheries, forestry, cultural resources, local business, and real estate as well as other community members concerned about protecting the North Coast's extraordinary environment and quality of life. We work with landowners who seek to conserve their land and its special conservation values. As a nonprofit land trust, we are legally qualified to hold conservation easements and accept gifts of land and tax-deductible donations. We also provide certain contract services such as mapping, grant application development, and facilitation of habitat restoration projects.

Since its founding, NRLT has permanently protected over 56,000 acres of forest, coastal wetlands, oak woodlands, and range through conservation easements and acquisitions. We are privileged to live in a remote area that still has a low population, wildlife, abundant open space, clean air and water, and high quality recreation, and we do not want to lose these qualities that make our region unique. We want to establish a legacy of conserved land and help shape a sustainable future for our region's family-owned ranches, farms and forests.

# What is a Land Trust?

A land trust is a nonprofit organization that, as all or part of its mission, actively works to conserve land by acquiring land and/or conservation easements (or assisting with their acquisition), as well as stewarding land and/or conservation easements. Land trusts work throughout the country and comprise a wide range of sizes (from national organizations to local grassroots groups) and focus areas (some focus on protecting wild places, while others focus on conserving working forests and agricultural lands).

## **HOW CAN INDIVIDUALS WORK WITH LAND TRUSTS TO PROTECT THEIR LAND?**

Land trusts work hand-in-hand with landowners to find ways to conserve land in the face of ever-growing development pressure. Landowners can conserve their property by donating or selling it to a qualified conservation organization, donating or selling a conservation easements (permanent deed restrictions on the property that prevent harmful land uses), or by devising other plans to maintain open space.

## **WHAT KIND OF LAND DO LAND TRUSTS PROTECT?**

Land trusts protect open space of all kinds – wetlands, ranches, forests, farms, scenic vistas, culturally significant lands, and recreational properties – land of every size and type that has conservation, historic, scenic or other space values.

## **ARE LAND TRUSTS SUCCESSFUL?**

Absolutely. The first land trust was founded more than 100 years ago in New England. As of 2015, land trusts throughout the United States have protected over 56 million acres of wetlands, wildlife habitat, ranches and farms, shorelines, forests, recreation land other property of ecological significance. Indeed the number of local land trusts has grown phenomenally, from 743 in 1985 to more than 1,300 today. Land trusts operate within all fifty states in our nation.

## **CONSERVATION EASEMENTS & FINANCIAL BENEFITS TO LANDOWNERS:**

A conservation easement is a legal agreement between a landowner and an entity such as a land trust that permanently protects special features of a property such as farming, ranching and forest production, open space, scenic vistas and wildlife habitat. Each conservation easement is tailored to the specific needs and desires of the landowner and the unique qualities of the property. Conservation easements “run with the land” and become part of the property title. The land trust ensures that the terms of the easements are honored by present and future landowners. The property remains in private ownership and can be sold, leased, or passed on to heirs. A conservation easement does not grant public access unless desired by the landowner. Conservation easements can provide tax benefits for the landowner: Income taxes may be reduced by deducting the value of the conservation easement as a charitable gift. Estate taxes may be reduced by lowering the appraised value of taxable land assets. Property taxes may be reduced. In some cases, conservation easements are purchased by land trusts and public agencies to ensure long-term public benefits. The sale of a conservation easement may provide the landowner with funds not otherwise available and enable continued ownership and responsible stewardship of the property.

# Is a Conservation Easement the Right Choice for my Property?

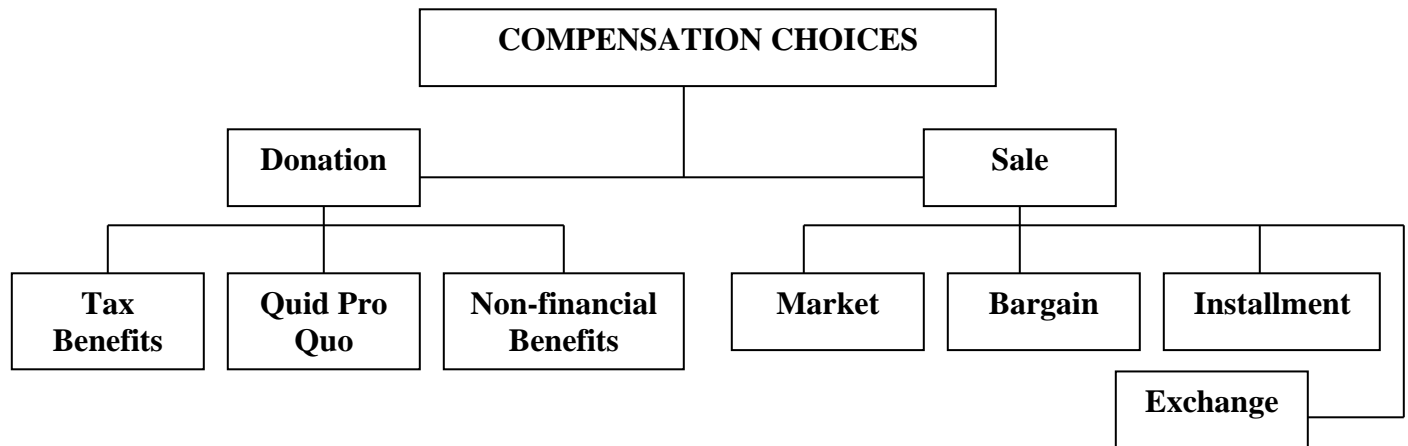
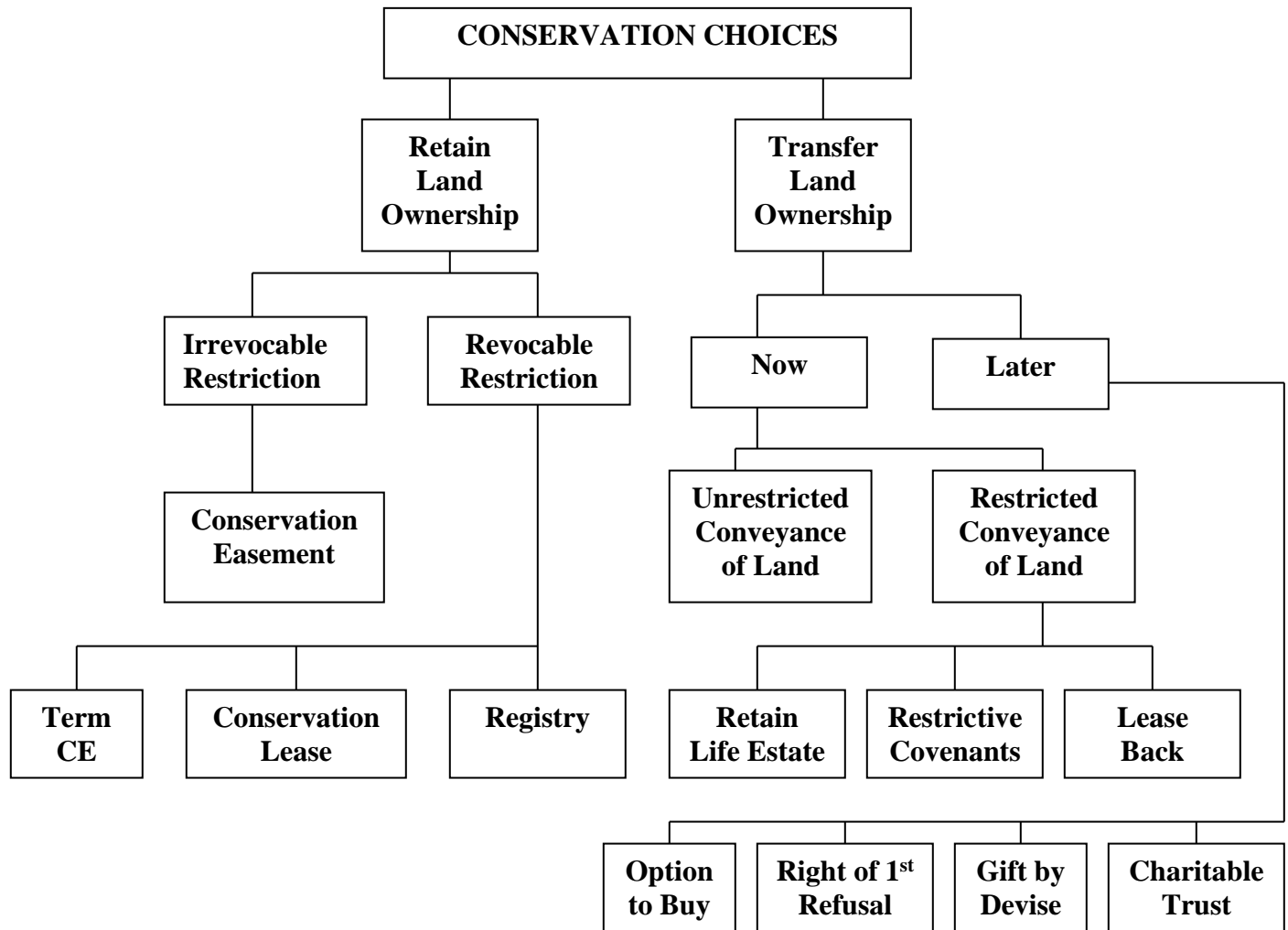
*The following is a short list of questions you should ask to help decide if a Conservation Easement is right for you, your family, and your property.*

- ✧ Do you want to protect the working forest and/or agricultural land values your property provides?
- ✧ Do you want certain natural features of your property to be protected into the future yet retain private ownership of your land?
- ✧ Do you want to protect the natural habitats or ecological benefits your land provides?
- ✧ Do you want the scenic and historic values of your land to remain intact for future generations to enjoy?
- ✧ Are estate taxes a threat to keeping your farm, forest, or ranch in the family when you pass on?
- ✧ Could you benefit from significant income and estate tax deductions?

*If you answered “yes” to any or all of the above questions, then a Conservation Easement may be worth investigating further.*

# Options for Landowners

## Strategies for Land Conservation



# A Guide to Conservation Easements

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Each year, the United States loses hundreds of thousands of acres of productive farmland, forest, wildlife habitat and scenic open space to development and land conversion. To prevent or limit further development of farms, forests, and open space, individuals and communities across the country are increasingly participating in working land and open space conservation easements. For many, a conservation easement is a practical protection tool which offers benefits for landowners, their land, and the public.

## What is a conservation easement?

A conservation easement is a voluntary agreement that allows a landowner to limit the type of development or resource use on their property while retaining private ownership of the land. When completed, the conservation easement becomes part of the property deed. A way to visualize this is to think of owning land as holding a bundle of sticks. Each stick represents the landowner's right to do something with their property--the right to build a house, subdivide the land, extract minerals, build roads, harvest timber, etc. A landowner may give up certain rights (sticks from the bundle) associated with their property through a conservation easement.

*An agricultural and open-space conservation easement restricts land to agriculture and open space uses. The easement generally prohibits or severely limits any subdivision or development or any practice which would damage the agricultural and open space value of the land.*

By donating certain relinquished rights to a qualified organization (a land trust or government agency), and by meeting specific conditions, a landowner may become eligible for certain tax benefits. The organization which receives (is granted) the easement accepts responsibility for monitoring and enforcing the restrictions in perpetuity. Tax benefits are available only for perpetual easements that subject all future landowners to their restrictions.

## How does a conservation easement affect my property rights?

A landowner who participates in a conservation easement retains all rights to use the land for any purpose that does not interfere with the purpose and specified restrictions laid out in the conservation easement. The specific rights that a property owner is restricting or retaining are spelled out in each individual easement. While an easement could remove development rights, the landowner still holds the title to the property, the right to restrict public access and the right to pass the property to whomever. The property can be mortgaged, transferred or sold just as it normally would, whether it is encumbered by a road easement, power-line right-of-way, or a conservation easement.

## What are the benefits of a conservation easement?

**Benefits to landowners** -- donating a conservation easement to a qualified nonprofit organization can significantly reduce federal and state *income taxes*, local *property taxes* (on a county-by-county basis), and *estate and inheritance taxes*. The Internal Revenue Service may allow a deduction if the easement is perpetual, is donated "exclusively for conservation purposes" and meets certain criteria for those conservation purposes. The amount of the tax deduction is determined by the value of the conservation easement. The value of a donated easement is deductible from federal income taxes just like a contribution to a church or charity. Estate planning on family farms and ranches may use conservation easements to promote family ownership for future generations.

In addition, profitability and economic survival are critical concerns in farming and ranching, as in any business. However, unlike other business, you work directly with the land. Through a conservation easement, a landowner can protect their property to ensure that future generations have continued opportunities to ranch, farm and practice good stewardship.

**Benefits to the community** -- Protecting working lands and open space through conservation easements can help maintain our region's agriculture businesses. Additionally, easements offer a way for private individuals and neighbors to work together to protect their area's scenery, agricultural heritage and rural quality of life. Public benefits include protection of land for open space, wildlife, ecological protections, responsible resource production and scenic enjoyment – all of which can be lost through unrestricted development. In addition, land placed under a conservation easement remains in private ownership, meaning the cost of managing the land with a conservation easement continues to be the responsibility of the landowner and not a public entity. This also means that the land continues to contribute to the local tax base as opposed to land transfers to public ownership where the tax base may be eroded.

## How is the value of an easement determined?

Land ownership can be viewed as owning a variety of separate rights on the property. When an easement limits any of these rights, the value of the land is affected. The value of the conservation easement is the difference between the value of the land without the conservation easement restrictions and the value of the land after the restrictions have been applied and certain rights (i.e., development) removed. When the landowner seeks to donate the conservation easement and the easement qualifies under IRS regulations, this amount is also generally the value of a charitable donation. The conservation easement value must be determined by a qualified appraisal.

Example: The Smith family has decided to convey an agricultural easement on its 500-acre ranch to the Northcoast Regional Land Trust. The property's appraised value before an easement is in place is \$2,500,000. The property's appraised value after it is restricted by an easement (e.g. removing the non-farm development rights) is \$1,500,000. The difference between the before and after property values would be the value of the easement ( $\$2,500,000 - \$1,500,000 = \$1,000,000$ ).



## How are the tax benefits of an easement calculated?

*Conservation Easement Tax Law changes periodically. NRLT strongly advises that you consult with an independent legal and/or tax adviser if you are considering a conservation easement for your property.*

**Federal income-tax benefits** – In a great victory for landowners interested in conservation, the enhanced tax incentive for conservation easement donations has been made permanent. According to IRS code, qualified conservation easement contributions (e.g. donated conservation easements) can be treated as charitable gifts. The value of the gift can then be deducted at an amount of *up to 50 percent of the donor's adjusted gross income (AGI) for non-agricultural landowners and up to 100 percent of AGI for agricultural landowners* in the year of the gift. To qualify as an agricultural producer you must earn over 50% of your annual gross income from agricultural operations. If the easement's value exceeds the respective percentage of the donor's income, the excess can be carried forward and deducted (subject to the established percentage limit) in each of the fifteen succeeding tax years.

Since the Smiths receive less than 50% of their annual income from agricultural operations they do not qualify as agricultural landowners, and therefore are eligible for a 50% AGI deduction from their easement donation. The value of their easement, as figured above, is \$1,000,000. If their combined income in the year of the easement transaction is \$90,000, they would be able to deduct \$45,000 in the first year.

Since the value of the easement is greater than their allowable deduction, the Smiths would also be able to deduct \$45,000 for each of the next fifteen years (assuming a constant adjusted gross income of \$90,000). Their total income-tax deduction for the sixteen-year period would be \$720,000.

**State income-tax benefits** – Many states provide an additional deduction for easements.

**Property tax benefits** -- Some counties direct local tax assessors to take into account the existence of conservation easement restrictions when assessing property. If the property is not already receiving farm-use valuation (e.g. Williamson Act), this can result in lower property taxes.

**Inheritance tax benefits** -- The donation of an easement, whether during a landowner's life or by bequest, can reduce the value of the property upon which estate taxes are calculated. Each year Congress sets the minimum value of the estate required for the tax to take effect. For 2011 the value is \$1,000,000, with a maximum tax rate of 55%. Most farm property is also subject to state inheritance taxes. By reducing this tax burden through an easement donation, a landowner can help ensure that his or her family does not have to sell the farm just to pay taxes on it.

**No Assurance on Donor Deductibility or Tax Benefits** – While NRLT is familiar with the IRS Code pertaining to qualified conservation contributions (such as donated

conservation easements or fee land), we cannot make any representations or guarantees on the availability of any tax deductions or credits or the applicability of your project for such benefits. Before considering a tax deduction or credit for a charitable contribution we strongly recommend consulting an independent legal or tax advisor.

## **Can some development be allowed under an easement?**

Conservation easements are flexible documents. They may be written to apply to the entire property or to only a portion. For example, if someone owns 520 acres, the landowner may decide to restrict development on 500 acres. The remaining 20 acres would not be affected by the easement.

Conservation easement terms are tailored to suit the needs of the landowner and the property. While conservation easements may restrict certain uses of the land, some limited development may be allowed. For example, an easement generally permits the construction of new farm buildings and can allow construction of carefully located houses within a 'buildable' area defined and mapped out in the easement document. Certain significant parts on a property may remain 'forever wild,' where no development or alterations are permitted. The flexibility of other restrictions will vary with the characteristics of the land and the conservation objectives of the easement.

## **Who owns and manages easement protected land?**

The landowner retains full rights to control and manage their property within the limits of the easement. The landowner continues to bear all costs and liabilities related to ownership and maintenance of the property. The organization that owns the easement will monitor the property to ensure compliance with the easement's terms but has no other management responsibilities and exercises no direct control over other activities on the land.

## **Why do people grant conservation easements?**

People grant conservation easements because they want to protect their property from future unwanted development and damaging land uses, while retaining ownership of their land. By granting a conservation easement, a landowner can assure that the property will be protected, regardless of who owns it in the future. An additional benefit is that the donation of an easement may provide significant financial advantages.

## **How long does an easement last?**

An easement's duration is usually set up to last forever (the legal term is in *perpetuity*); certain government programs allow for ten to thirty-year easement contracts. Tax benefits, however, are only available for permanent easements. If a property is mortgaged, the owner must obtain an agreement from the lender to subordinate its interests so the easement cannot be extinguished in the event of foreclosure. An easement is legally binding on all future landowners for the agreed-upon time period. An agricultural conservation easement can, however, be modified or terminated by mutual

agreement if the land or its surroundings change so that the agricultural conservation objectives of the easement can no longer be achieved.

## Can an easement be modified or amended?

A conservation easement can only be changed or amended with the consent of both the property owner and the easement grantee (i.e., the land trust). A conservation easement is unlikely to be changed unless the change would support the conservation values defined in the easement. In some cases, easements placed on agricultural lands specifically to sustain production, have been removed if outside forces (adjacent land use, local laws and regulations) limit agricultural production.

## What are the disadvantages of a conservation easement?

A conservation easement is not appropriate in every case. Some parcels of land are not sufficiently valuable from a conservation standpoint to justify the restrictions of an easement. A potential disadvantage for the landowner is that a conservation easement, in restricting the use of the land, may reduce the land's market value. A landowner concerned about the financial implications of a conservation easement should carefully weigh the trade-off between possibly reduced market value and potential tax advantages.

For the conservation organization (grantee), an easement means the responsibility and expense of monitoring compliance with the easement and, if necessary, enforcing the easement in court. The Northcoast Regional Land Trust will accept an easement only if it meets our objectives and only if we can fulfill the responsibilities involved. Finally, a successful conservation easement will involve solid partnership between the landowner and easement holder. As such, mutual trust and good communication are key to avoid unnecessary disputes.

## Common misconceptions about conservation easements

1. **Misconception:** Ownership of land is given up.

**Response:** Landowner retains ownership but sells or donates an interest in (easement on) the land.

2. **Misconception:** Land encumbered by a conservation easement cannot be sold, mortgaged, or passed on to future generations.

**Response:** Because the landowner retains fee ownership, it can be passed down, sold or mortgaged like any other real property.

3. **Misconception:** Public access generally is required once you grant a conservation easement.

**Response:** An easement includes the right of reasonable access only to the holder of the easement to monitor the easement. Public access can be written into an easement, but only if the landowner desires it.

**4. Misconception:** I can no longer run cattle, cut firewood, or log.

**Response:** Conservation easements usually preserve, rather than prevent, such land uses. Many easements permit selective timber harvest guided by forest management plans. Restrictions on these activities are possible should the landowner wish it.

**5. Misconception:** An easement will tie the hands of my heirs.

**Response:** Although that is true, an easement will tie their hands far less than if heirs are forced to sell property to pay estate taxes. Landowners are encouraged to consult with their legal and financial advisors and to plan with their heirs to consider options such as reserving building sites which can be bequeathed as separate properties to future family members or sold for cash if the need arises.

**6. Misconception:** I can avoid property taxes.

**Response:** Because you remain the property owner, you remain liable for property taxes.

**7. Misconception:** Conservation easements are just tax dodges for the wealthy.

**Response:** Conservation easements are a fair trade of property rights for conservation in perpetuity. Conservation easements must provide public benefits such as the conservation of open space, agricultural land, wildlife habitat, education, and historic values.

# Planning, Drafting & Adopting a Conservation Easement – A Summary

- 1. Landowner reviews the Guide for Landowners and provides basic details of the project. Also, discuss any questions related to conservation easement projects (here and throughout the process).
- 2. Landowner completes the Project Questionnaire (NRLT staff is available to assist upon request).
- 3. NRLT staff reviews the project, develops a work plan and budget, and secures Projects Committee and Board of Directors approval.
- 4. Once the Work Plan is approved, NRLT staff will coordinate a meeting with the landowner, project staff lead, and Executive Director to discuss details of a conservation easement project and answer any questions the landowner may have after reviewing the Guide for Landowners.
- 5. Negotiate and sign Project Agreement and/or Fee-for-Services Agreement.
- 6. Schedule site visit with NRLT staff and landowner (preferably include NRLT Board representative).
- 7. Secure preliminary title report. Make sure any discrepancies in the title review are clarified and resolved (cleared) so as to not complicate the conservation easement process. If owned by a third party, ensure mineral rights are transferred or subordinated. Ensure any outstanding mortgages on the property are subordinated.
- 8. If applicable, pursue grant funding for the conservation easement project.
- 9. Obtain certified conservation easement appraisal. In the case of a purchased conservation easement, the appraisal will likely need to be reviewed by a representative of the funding agency.
- 10. Negotiate final easement terms. Make sure any funding or partnering agencies approve of the easement terms prior to considering the draft final.
- 11. Negotiate and agree upon stewardship donation value.
- 12. NRLT staff prepares a Baseline Conditions Report. Completion of the BCR needs to be done within 60 days of recording the easement. Ensure completion of the Monitoring Plan during BCR development.
- 13. Sign and record at the appropriate county recorder's office the final conservation easement.
- 14. NRLT Staff will conduct annual monitoring of the conservation easement in perpetuity to ensure protection of defined conservation values and compliance with easement terms.

# Potential Project Questionnaire

Name: \_\_\_\_\_ Date: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Property Owner(s): \_\_\_\_\_

Property Name: \_\_\_\_\_

Property Address: \_\_\_\_\_

How did you hear about the Northcoast Regional Land Trust? \_\_\_\_\_

**Please complete the following information as best you can:**

1. Approximate acreage of entire property: \_\_\_\_\_

2. Approximate acreage of proposed project (if different from above): \_\_\_\_\_

3. A.P. Assessor Parcel #(s): \_\_\_\_\_

4. What is the zoning of the property? Please include zoning types and acreage for each.

5. Are all parties with an ownership in the property in agreement with this potential project?

Yes

No (describe): \_\_\_\_\_

6. Does the property owner have full title to the property, or is the property encumbered with a mortgage or any other encumbrances (e.g. easements, deed restrictions, encroachments, liens)?

Owner holds full title

The property is encumbered with a mortgage

The property is encumbered with the following: \_\_\_\_\_

7. The property owner is interested in:

Donating **the entire** value of the conservation easement on the property

Donating **a portion** of the value of a conservation easement on the property

**Selling** the value of a conservation easement on the property

**Selling or Donating** the property

**8.** Does the property have a forest or ranch management plan in place?

Yes

No

**9.** Are you aware of any neighboring properties that have pursued a conservation easement or acquisition and/or would be likely candidates for a conservation easement or acquisition?

Yes

No

If appropriate, please describe:

**10.** Please describe the property owner's reasons for pursuing a conservation easement or land acquisition project. Please also explain if the potential project is time-sensitive and, if so, why:

**11.** Please give an overview of the biological and/or habitat values the property provides (e.g. vegetation, wildlife, riparian, or wetland habitat):

**12.** Please describe the agricultural, scenic, historic, recreational, or special values the property provides (prime soils, open space, viewsheds from public roads, historic structures, special features, etc.):

**13.** Please describe the past, current, and foreseeable future uses (business, personal use, resources needs, leases, etc.) on the property. Please include any information on past, current, or considered future cannabis cultivation activities on the property:

**14.** Please describe any threats to the property such as planned or potential subdivision and/or development. If applicable, please include information about development pressures or impacts to adjacent properties:

**15.** Have there been any environmental violations on the property in the past five years?

Yes

No

If yes, please describe:

**16.** Please include any additional information or comments you believe would be helpful for the Northcoast Regional Land Trust to consider:

**Supporting Materials Attached:**

Map depicting the property (topographic, County, or other)

Photographs depicting property

Other, please describe: \_\_\_\_\_