



# NORTHCOAST REGIONAL LAND TRUST

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## CONSERVATION EASEMENTS

### A Guide for Landowners

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*The Northcoast Regional Land Trust has compiled this packet to help you understand what a conservation easement is and to assist you in determining if a conservation easement is appropriate for you and your property. Our staff is available to discuss any questions or concerns you may have.*

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# NORTHCOAST REGIONAL LAND TRUST

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**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.

**WHO WE ARE AND WHAT WE DO:** Founded in 2000, the Northcoast Regional Land Trust (NRLT) comprises a broad cross section of community members with backgrounds in ranching, farming, fisheries, forestry, land use planning, and local business. In partnership with private landowners, public trust agencies, and other supporters, NRLT has permanently protected over 60,000 acres of wild and working lands in the region.

We work with landowners who seek to conserve their land and its special conservation values including timber and agricultural productivity, wildlife habitat, and watershed values. The primary tool that we use to accomplish this is through conservation easements on private properties.

As a nonprofit land trust, NRLT is legally qualified to hold conservation easements and accept gifts of land and tax-deductible donations. We also provide services such as mapping, grant application development, and facilitation of land stewardship and habitat restoration projects.

## **WHAT KIND OF LAND DOES NRLT CONSERVE?**

While the majority of NRLT's completed conservation projects encompass a balance of wild and working land values, we consider projects that conserve open space of all kinds – wetlands, ranches, forests, farms, scenic vistas, culturally significant lands, and recreational properties. NRLT has completed conservation easements on properties as small as 13 acres to as large as 15,000 acres with a median of around 3,000 acres.

## **WHAT IS A LAND TRUST?**

A land trust or land conservancy is a nonprofit organization that actively works to permanently conserve land. Every land trust is as unique as the community it serves.

In some cases, land trusts acquire land outright. They also partner to conserve land that remains the property of willing landowners using conservation easements. Land trusts may also help manage or restore land once it has been conserved.

Land trusts can be local, state or regional in scope, working directly with private landowners and community partners to protect land that has natural, recreational, scenic, historical or agricultural values. Land trusts work in 93 percent of U.S. counties — serving urban, suburban and rural communities.

Land trusts can be all-volunteer or made up of a volunteer board of directors and paid staff that represent a diversity of skills and experience.

### **ARE LAND TRUSTS SUCCESSFUL?**

Absolutely. The first land trust was founded more than 100 years ago in New England. As of 2022, land trusts throughout the United States have protected over 61 million acres of wetlands, wildlife habitat, ranches and farms, forests, and other property of ecological significance.

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

Landowners can conserve their property by donating or selling it to a qualified conservation organization, donating or selling a conservation easement, or through other means such as conservation lease or term-limited easement.

### **WHAT IS A CONSERVATION EASEMENT & HOW DOES IT BENEFIT LANDOWNERS:**

A conservation easement is a legal agreement between a landowner and an entity such as a land trust that permanently protects special values 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 each easement is 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 also be reduced.

Conservation easements may also be 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?

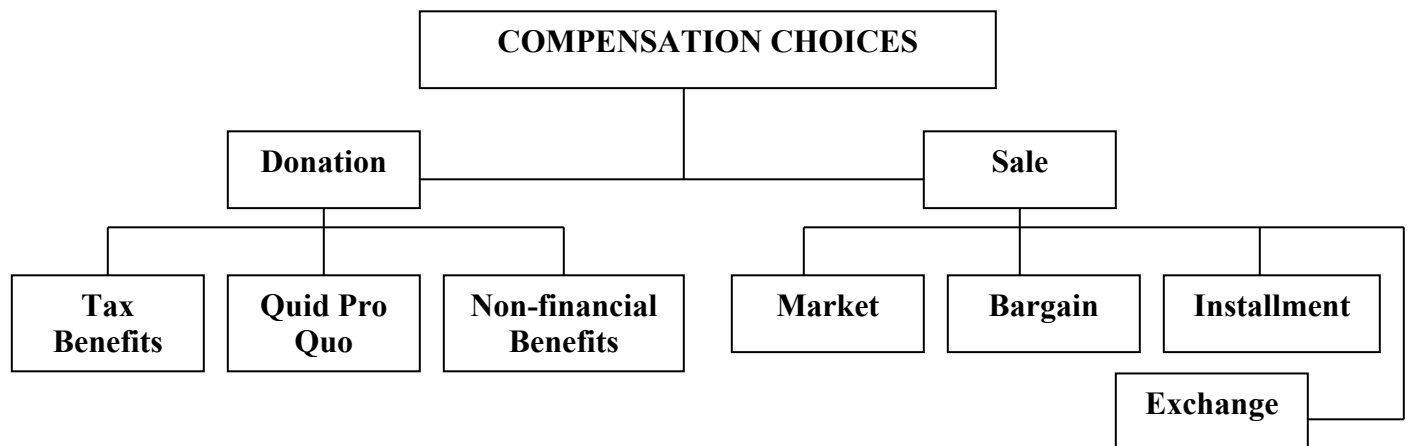
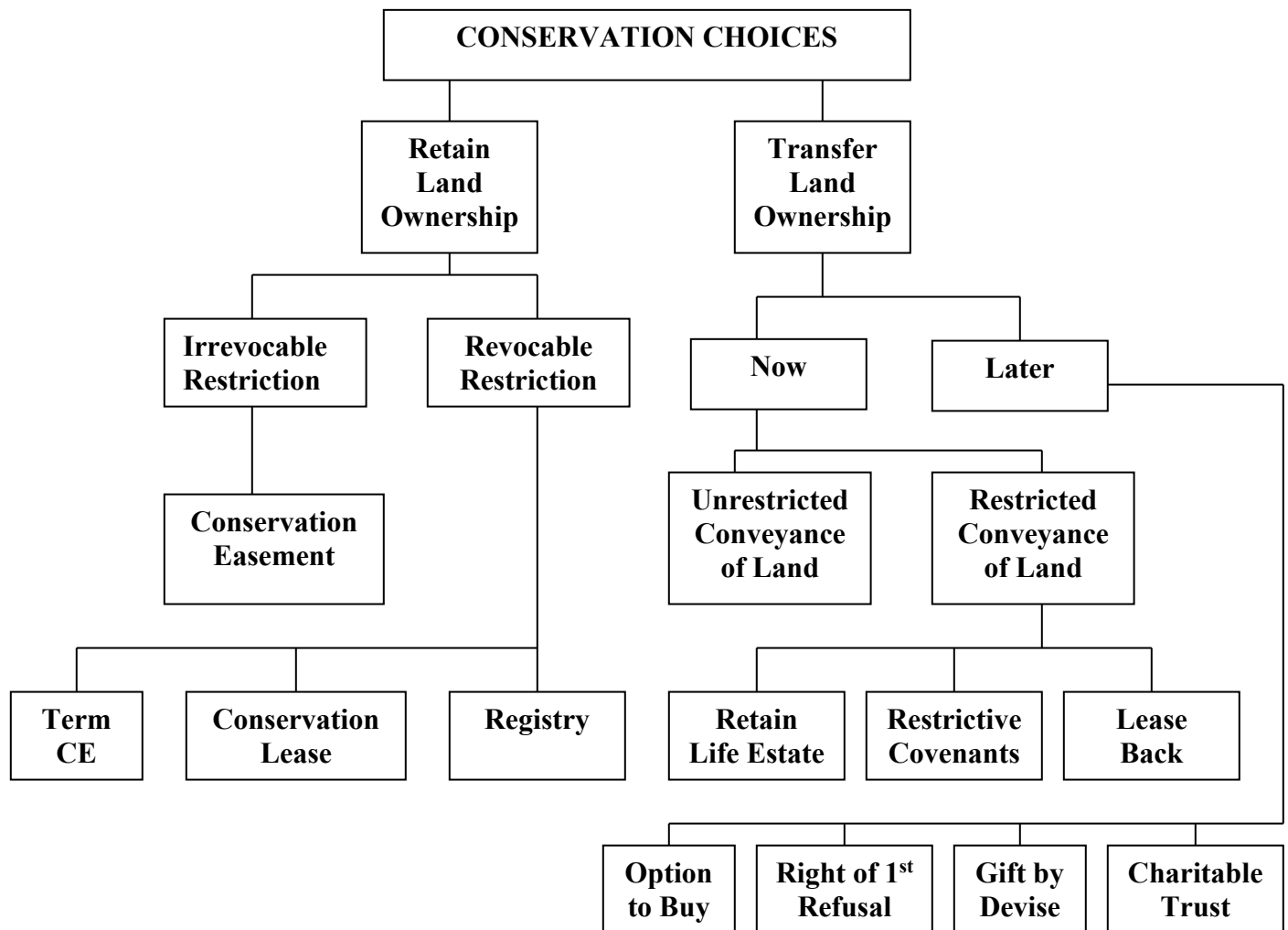
*The following is a short list of questions you should ask to help decide if a Conservation Easement is right for you, your family, and your property.*

- ✧ Do you want to protect the working forest and/or agricultural 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 permanently limits certain uses of the land to protect its conservation values while retaining private ownership of the property. 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.

Typical conservation easements held by NRLT restrict land to agriculture, working forest, wildlife habitat, and open space uses. Easements generally prohibit subdivision, limit development, and restrict other practices which would damage the defined conservation values 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 certain 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 (IRS) may allow a tax 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 based on the appraised easement value and determined by the donated value of the 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.

NRLT understands that for working forest, ranch, and agricultural landowners, economic viability is a critical concern and we strive to craft conservation easements that take this into account. Through a conservation easement, a landowner can ensure that future generations have continued opportunities to ranch, farm and practice good stewardship on their property while protecting the conservation values we all care about.

**Benefits to the community** – Protecting working lands through conservation easements helps maintain our region's natural resource base, protect rural livelihoods, and safeguard the area's open space, natural heritage and rural quality of life. Additional public benefits include protection of land for fish and wildlife, diverse habitats, educational values, responsible resource production and scenic enjoyment – all of which can be lost through unrestricted development and irresponsible land use.

## 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** – According to IRS code, qualified conservation 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 in each of the fifteen succeeding tax years.

**Example:** 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 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.

**Property tax benefits** -- Some counties direct local tax assessors to take into account the existence of conservation easement restrictions when assessing property. NRLT advises that landowners work with a tax professional (and county assessor's office) to determine whether a conservation easement could reduce your 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. 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. NRLT strongly advises that landowners work with a tax professional to determine how a conservation easement may benefit you.

**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. The terms of a conservation easement are tailored to each unique property and will consider the needs of the landowner, the goals of the land trust, and, for purchased easements, the priorities of the funding agency. An easement can apply to an entire property, or a portion of it.

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 'development area' defined and mapped out in the easement document. Other areas 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, the goals of the land trust, 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.

## 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, in restricting the use of the land, a conservation easement may reduce the land's market value. Because conservation easements are designed to be permanent, a landowner should carefully weigh the benefits and disadvantages before deciding to move forward.

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. NRLT will accept an easement only if it is consistent with the organization's mission and only if we can fulfill the responsibilities involved.

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 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 property to ensure easement terms are upheld. 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 meets with NRLT staff to discuss any questions related to the conservation easement process and provide basic details of the project.
2. Landowner completes a Project Questionnaire individually or with assistance from NRLT staff.
3. NRLT staff reviews the project, develops a work plan and budget, and advances to the Projects Committee and Board of Directors for 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 the conservation easement project and answer any questions the landowner may.
5. Negotiate and sign Project Agreement and/or Contract Agreement.
6. Schedule a site visit to the property with landowner and NRLT staff, preferably including an NRLT Board representative.
7. Secure preliminary title report and, if applicable, restricted use appraisal or estimate of value. Make sure any discrepancies in the title review are clarified and resolved (cleared). If mineral rights are owned by a third party, ensure they are transferred, subordinated, or obtain a mineral remoteness determination. Resolve any outstanding mortgages on the property.
8. Enter into Option Agreement or, at a minimum, landowner to provide Willing Seller Letter.
9. If applicable, pursue and secure grant funding for the conservation easement project.
10. Negotiate easement terms. Make sure landowner, land trust, and (if applicable) any funding agencies involved approve of the easement terms prior to considering the draft final. Review and, if necessary, revise and agree upon stewardship donation value.
11. Obtain a certified appraisal to determine the value of the conservation easement. For certain properties, a timber appraisal may also be required.
12. NRLT staff prepares a Baseline Conditions Report and Monitoring Plan. Completion of the BCR typically needs to be done within 60 days of recording the easement.
13. NRLT will open an escrow account with a title company to hold any funds associated with the project and to process the documents to be recorded.
14. Sign and record the final conservation easement and associated documents.
15. For donated and bargain sale conservation easement projects or acquisitions where the landowner is claiming a tax deduction, the landowner is responsible for completion of IRS Form 8283.
16. NRLT Staff will conduct annual monitoring of the conservation easement in perpetuity to ensure protection of the defined conservation values and compliance with easement terms.



## Potential Project Questionnaire for Land Acquisition and Conservation Easement Projects

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

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

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

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

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

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

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

### Please complete the following information to the best of your ability:

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

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

3. Please list all Assessor Parcel Numbers (APNs) for the property/potential project:

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

5. The property owner is interested in (check all that apply):

- ☐ **Selling the full value** of a conservation easement on the property
- ☐ **Donating the full or partial value** of a conservation easement on the property
- ☐ **Selling the property** to NRLT so that it can be conserved
- ☐ **Donating the property** to NRLT so that it can be conserved
- ☐ **Donating the property as an unrestricted gift** to NRLT to best support its mission
- ☐ **Other/Wish to discuss options**

6. Are all property owners of record in agreement about this potential project?

- ☐ Yes
- ☐ No (describe): \_\_\_\_\_

7. Please describe the property owner's reasons for pursuing a conservation easement or property sale/donation. Please explain if the potential project is time-sensitive and, if so, to what degree and why:

8. 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 title free and clear  
☐ The property is encumbered with a mortgage. Describe: \_\_\_\_\_  
☐ The property is encumbered with the following: \_\_\_\_\_

9. Has the property been subject to any environmental compliance issues, violations, or enforcement actions in the past five years

- ☐ Yes  
☐ No

If yes, please describe: \_\_\_\_\_

10. Does the property have deeded access?

- ☐ Yes  
☐ No

11. Does the property have a forest, ranch, or other similar management plan in place?

- ☐ Yes  
☐ No

If yes, please describe including when the plan was completed or last updated: \_\_\_\_\_

12. 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 yes, please describe: \_\_\_\_\_

- 13.** Please provide an overview of the biological and/or habitat values the property offers (e.g. vegetation, wildlife, riparian, wetland, or other unique/important habitat):
- 14.** Please briefly describe what, if any, improvements are on the property (e.g. buildings and other structures; water and electrical infrastructure, fences, corrals, etc.) including their condition:
- 15.** If applicable, please provide a summary of recent agricultural use on the property including the use of livestock and/or the production of plant crops or other agricultural products:
- 16.** If applicable, please summarize forest management activities that have occurred on the property over the last 30 years, including timber harvest and silvicultural method, timber stand improvement activities, and any additional information that may be of note:
- 17.** Please describe the scenic, historic, cultural, recreational, or other special values the property provides (e.g. prime soils, open space, viewsheds from public roads, historic or cultural resources, unique features, etc.):



18. Please describe any other past, current, and foreseeable future uses (e.g. business uses, personal uses, leases, mining/quarry activities, cannabis production, etc.) of the property:
19. Please describe any plans for, or interest in, additional improvements to the property (e.g. primary residence, caretaker residence, accessory buildings, recreational cabin, etc.):
20. Please describe any threats to the property such as likelihood for subdivision, development, and/or change of ownership. Please also note if you are aware of any recent or threatened subdivision and development pressure on adjacent or nearby properties:
21. If a conservation project, please note the most important values sought to be conserved (e.g. agricultural values, forestland values, specific habitats, unique resources, etc.):
22. Please include any additional information or comments you believe would be helpful for NRLT to consider:

**Supporting Materials Attached:**

- ☐ Map depicting the property (topographic, County, or other)
- ☐ Photographs depicting property
- ☐ Title Report for the property (not required, but can be helpful for NRLT's initial assessment)
- ☐ Real Estate Appraisal (not required, but can be helpful for NRLT's initial assessment)
- ☐ Other, please describe: \_\_\_\_\_