

Conservation Burial

A Primer on the Relationships with Conservation Organizations and Drafting of Conservation Easements

by Lee Webster

Only a handful of conservation burial grounds are operating in the US, each with unique operating models and practices. Their one defining characteristic is that each has partnered with a conservation land trust or government partner to create protective agreements and easements for the land and those buried there in perpetuity.

Land trusts have clear missions and strategies that enable them to accomplish varied goals within the scope of their properties and those lands where they hold easements. Deciding to make the financial and perpetual commitment to holding an easement on property owned by someone else is a weighty deliberate process. The conservation values present on the land must be compatible with the activities allowed on the property. Burial grounds are a relatively new ask from landowners and groups that are forming to purchase land for the purpose of natural burial. Because conservationists are risk averse, landowners who approach them with conservation burial, need to understand why and how to work with conservation organizations.



As more natural burial grounds become available to those seeking to benefit ecosystems and support conservation, appropriate language for instruments that protect those sustainable burial spaces has been difficult to find. The following information has been gathered to inform both potential burial ground landowners and the conservation community of some of the issues and concerns involved in conservation burial easements. It also includes practical language that has been approved in some existing burial grounds which may be valuable to both parties. Some general information is provided at the start for both groups, with the hope that it will begin the work of nurturing understanding and clear the way for concise, productive partner negotiations.

FREQUENTLY ASKED QUESTIONS

Why Should Land Trusts Consider Natural Burial on Their Properties?

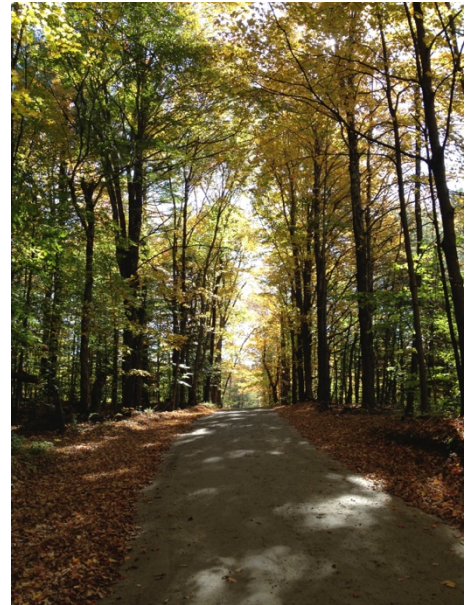
The connections between conserved land and natural full body burial may not be obvious at first glance, but there are compelling reasons why both landowners and land trusts might consider it.

While we have been led to believe that cemeteries are inviolate, history shows that whole graveyard contents have been dug up and relocated, particularly from cities to the country, as urban sprawl and development encroaches on

natural spaces. And this has happened despite *the right of sepulcher*, the American legal mandate that is supposed to afford the dead undisturbed repose for eternity.

Conserved land is a place that respects and protects animal lifecycles. The bodies of all beings that die on the land naturally decompose to enrich the soil and contribute to a balanced biosphere and ecosystem. Human burial at the most advantageous depth in most soil mediums, unimpeded by man-made, non-biodegradable container materials or attempts at preservation of the body, do the same. All scientific evidence points to the fact that current materials used in conventional cemetery management—concrete, steel, copper, exotic hardwoods, polyester fabrics, formaldehyde and other toxic chemicals, pesticides, herbicides, fertilizers—are the real dangers to soil and water. Adding natural human burial to the decomposition census is an environmental plus, not a burden.

Natural burial is consistent with the desire to reduce disturbance of soil. Very little space is disturbed as there is no need to accommodate vaults and oversized caskets. A pine casket made to fit takes up little room, and a simply shrouded body takes up less. Burials occur in the second horizon, between three and a half to four feet, with the soil returned in the reverse strata it was removed. Soil is then mounded—not removed—and the grave left to settle. Animal disturbances are not a concern, as the depth is sufficient to create a smell barrier that leaves animals unaware of what lies below, though they are often curious initially, pleased with the grubs and other easy pickings turned up. The grave is then left to naturalize. The area is carefully inventoried and restored with native plantings as a part of the botanical restoration plan and to offer families a living memorial in place of plastic flowers. A native fieldstone might be placed on the grave, but left to its own, not bolstered by underground concrete plinths.



Burials occur along planned access trails or in an open area or meadow designed specifically for the purpose, reducing the amount of foot traffic in the landscape. The burial ground itself is clearly defined through a system called plats, or planned grave spaces, in a select area, not scattered throughout the property. Responsible cemetery management along with conservation best practices results in a symbiosis similar to other activities allowed on conserved land.

A funeral event forges a bond between the deceased, family, friends, and the wider community. A funeral with a natural burial further connects those individuals in attendance to the land where it occurs. That connection will endure through generations of visiting family and community members, sparking a personal identification with wilderness spaces. Conservation burials are a unique opportunity not only to acknowledge the deceased and their contributions but to educate about the merits of natural ecosystems and our place in them.

That deeply personal—and even spiritual—connection to the land creates a relationship that land trusts have to work hard to build through other means. Their very survival depends on the robust giving of community members who see the value of conserving this particular farm, that particular watershed. Land where a person known to them is buried connects donors to the land in a way no other giving program can. Sustained protection of the land and acquisition of future worthy properties are made possible through what could become a family's sustained intergenerational commitment to the land of their ancestors.

Direct costs of operating a viable burial ground are offset by opening and closing fees and plot sales, plus other potential revenue that is in keeping with the land trust's mission. Income from event admission is growing as conservation burial grounds are becoming a place to educate, recreate, entertain, and gather for events, such as concerts, baptisms, weddings, and family picnics. Creative use of the space can provide a much-needed, enhanced revenue stream as a result of offering opportunities to experience the property in new ways. Visiting a cemetery for reasons other than funerals forms cognitive connections that go beyond sadness and sorrow. Shared experiences of joy and friendship that mark life's milestones go even further to connecting participants to the land. This emotional investment is critical to fostering financial investment in the land trust's mission to continue hosting meaningful events on the land and stewarding it for future generations.

What Goes into Creating Landowner and Land Trust Partnerships?

Most often, lands that a land trust considers for easements are evaluated on the basis of conservation values that are present, such as historical features, rare or endangered plant or animal species, refuges for migrating birds, waterfront or watersheds, scenic vistas, or cultural features and values deemed a high preservation priority by that land trust. Proximity to other conserved land, waterways, recreational trails, agricultural lands, or greenways may also qualify the land for consideration.

For these reasons, and to locate hazardous or unsightly items, such as old tires, abandoned vehicles, dangerous cellar holes and wells, the landowner's first step may be to conduct a thorough resource inventory and land survey. These costs are borne by the landowner, along with other incidental costs that may be incurred, such as specific botanical studies or refuse removal.

At the time of signing with a land trust, a one-time stewardship endowment is set aside to support the monitoring of the conservation easement. Some land trusts require a donation from the landowner to this endowment.

Once the easement is signed, the land trust is responsible for monitoring its boundaries, conservation values, and defending any encroachment or misuse that could occur. If legal action is necessary to enforce the terms of the easement, or prevent outside interference or pressure to develop, land trusts work with landowners to determine how to defend against these infractions. The land trust is also responsible for ensuring that conservation objectives are followed.

Current and future landowners are subject to the conditions of the easement. This means that the land will continue to be used in the way the signers envisioned, but it does not restrict a change of ownership, either within or outside the family. It also means that, as long as the activities have been stipulated in the easement, fee-based activities such as farming, forestry, or recreational trails may continue to operate.



Some land trusts own conservation land that has become a conservation cemetery. They can operate and manage burial grounds themselves or they can work with external organizations, subject to state and local laws, to support and manage the burial grounds, which keeps the land trust free to stay on mission.

What Are Conservation Easements?

Simply put, conservation easements are perpetual legal agreements between a landowner and a conservation organization that provide assurance to the landowners that a third party will provide oversight to ensure their conservation objectives for their property will be upheld and independently monitored by an organization whose environmental values are in alignment with their own. The landowner retains ownership and is responsible for the management of the property. The conservation organization becomes a deed signatory and holder of some of the property rights related to upholding the conservation objectives, agreed to by the landowner and the conservation organization.

Why Is an Easement the Right Tool for the Protection of Land with Burial Space?

Easements serve the living and generations to come, and provide the highest level of protection available.

It is the secular instrument of a sacred covenant between humans and the land where the two meet in a very real way. Conservation easements have been proven to hold up to pressure for change in a way that even cemetery protections have not.

Imminent domain has been unscrupulously used to remove graves to make way for parking lots and shopping malls, highways and high-rises.

Cemeteries, despite being considered sacred ground by many, are operated by different entities allowed by the state that may not have the power, the funding, or the will once the cemetery is full and no longer revenue-producing, to withstand the challenge.

Easements are built with teeth that exceed even the best cemetery safeguards.



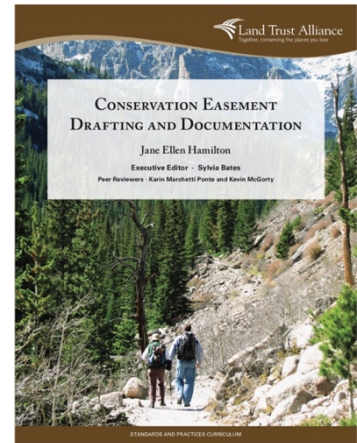
People choosing natural burial do so with the understanding that their bodies will be undisturbed. For many, this is more than a property rights issue: it is their primary intent to have their bodies contribute to the natural ecosystem, to “be a tree” as the popular vision of green burial asserts. Knowing that an easement is held by a reputable, well-funded land trust that has pledged to defend them after death is reassuring to those seeking to turn their commitment to health of the planet into reality. An easement may be perceived as allowing people to exercise their most human impulse to denounce mortality by believing in a practice that will give them de facto control beyond the grave. The essence of natural burial to eschew the showy monuments and shrines and to blend into nature means that those buried need a champion when they become invisible.

Most importantly, conservation burial operators and stewards are equally committed to best conservation practices. For many, the need to conserve land comes first; the burials support conservation, restoration, and land acquisition. While their interest is in providing natural burial space and creating community around the practice, they are ever mindful of the imperative to contribute to the sustainability of its interdependent systems. Easements that include this low-impact, high-potential conservation strategy stand to protect the goals of both landowner and land trust alike through their ability to ensure the sustainable future of the land and its human residents. Burial and conservation are naturally compatible. Easements provide the power to make the burial sustainable and mutually beneficial.

BURIAL GROUND OPERATORS: LEARNING MORE ABOUT CONSERVATION

Writing Conservation Easements

The instrument for protecting a conservation burial ground is usually a conservation easement. Burial grounds that wish to partner with land trusts to conserve the land they will be burying on need to understand both the added value and responsibilities of land conservation as its own ethic as well as the hard skills of cemetery management. Learning as much as possible about land conservation, restoration, and management is a critical first step toward successful cemetery management in service to families and communities and toward strengthening relationships between the burial ground operators and the easement-holding land trust.



To understand what goes into drafting conservation easements from the land trust perspective, read the **Land Trust Alliance** publication *Conservation Easement Drafting and Documentation* by Jane Ellen Hamilton, available for download on the Land Trust Alliance website at <https://www.landtrustalliance.org/publication/conservation-easement-drafting-and-documentation> for \$14.00.

Most land trusts have their own formula for crafting easements, and it is up to them to initiate drafting the written instrument. . The meeting between potential landowner and easement holder is an opportunity to clarify definitions of behaviors and practices that are deemed permissible, or not, and under what circumstances. It may be up to the landowner to specify items that pertain to natural burial, as this field is relatively new to many land trusts.

Please keep in mind that, although the suggestions below are fairly standard, easements must be written to both support the original covenants and also be elastic enough to not preclude necessary eventualities in the future that allow it to remain consistent with the original intent.

In this document, you will find:

Articles

In general, the following Articles, or major areas, are routinely included in conservation easements:

- Terms of the Deed
- Duration of the Easement
- Purpose of the Easement
- Definitions
- Authorizing Statutes
- Prohibited, Restricted and Permitted Uses and Activities

Addendums

Other written records may be advisable to have that are not part of the easement but are important for meeting expectations include in it, to inform the public., and to ensure follow through with the intent of the easement. These may include:

- Agreements
- Documentation

WHAT GOES INTO A CONSERVATION EASEMENT ARTICLES

Terms of the Deed

Terms of the Easement Deed

This introductory paragraph introduces the parties and explains their relationship to one another. Terms vary but may include: Grantor and Grantee, Landowner and Holder,

Recitals may follow (“Whereas...”) that lay out the particulars of the intentions of both sides in specific terms. This may include baseline documentation expectations, conservation values, relationships and responsibilities to other related agencies, recognition of legal authorities, mission statements, acreage, current use provisions, indemnification, or other important mutual agreements.

What goes into a conservation easement?

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Duration of the Easement

The language will indicate whether the deed is in perpetuity or what the conditions and/or processes are for extinguishment of the easement. It may also include information regarding succession.

Purpose of the Easement

Sample Language Regarding Cemetery Operations from Existing Conservation Cemeteries:

“It is the intent of the Grantor to utilize portions of the land for a Conservation Burial Ground, as defined by the Green Burial Council..., and which at the time of conveyance of this Conservation Easement requires cemeteries of this classification to adhere to the Standards listed in Exhibit “C” and which are incorporated herein as a Purpose of this Conservation Easement”

*What do the easements of already established conservation cemeteries say?
Read them here!*

“Grantor reserves the right to operate a commercial or non-commercial Conservation Burial Cemetery throughout the Conservation Easement Area subject to restrictions and terms herein. Grantor reserves the right to create and manage commercial and non-commercial enterprise that support the operation of the conservation Burial Cemetery located on the Conservation Easement Area subject to the requirement

that any such enterprise is compatible with the protection of the Conservation Values and does not require the construction of structures or conduct of activities unrelated to the operation of the Conservation Burial Cemetery...”

“It is the intention of Landowner to conduct green or natural burials on the Property.”

“The protected property functions as a green burial cemetery dedicated to landscape-level conservation and providing economical, environmentally sensitive, and alternative approaches to conventional burials; and Grantor promotes and encourages ethical and sustainable practices in the deathcare system and, when possible, the use of the burial process as a means of facilitating ecological restoration and protecting and preserving valuable natural areas of distinctive beauty...”

“... is dedicated, used and intended to be used for the final disposition of human remains. ... is an enterprise intended to support the nonprofit mission of This mission includes, but is not limited to, nature education and land conservation. ... will be managed as a nature preserve. It will not take on the appearance of a lawn or other manicured place. It is intended for ... to be dominated by natural processes and native species.”

“Whereas, Declarant is the owner in fee simple of certain real property designated by the ...County (state) Recorder as Parcel # consisting of approximately ... acres located in (town), (county) which the Declarant operates as a cemetery and nature preserve.”

Definitions

Listed below are some conservation- and cemetery-specific definitions that may be useful for inclusion in the easement and/or agreement document.

Conservation Burial—The interment of human remains and the remains of animals subject to the following requirements and prohibitions: no embalming; no installation of a burial vault; the use of a casket or shroud (if any) made exclusively from natural materials that biodegrade into non-toxic substances; minimal disturbance of the land surface; excavation of graves to the minimum depth required by law; restoration of the burial site and environs to a natural, largely unmaintained condition to provide habitat for Native Plants and wild fauna; and other related uses that are compatible with both the protection of the foregoing habitat and the maintenance of a peaceful environment.

Development Rights—Legal rights of an owner to develop a property or tract of land by building a structure or structures on it

Disturbance of Soil—Digging, routing, or otherwise significantly disturbing natural elements of land to the detriment of the environment (see Land Disturbance)

*Learn the language of
sustainable land
management and
conservation before
you begin!*

Duff—The more or less firm organic layer on top of mineral soil, consisting of fallen vegetative matter in the process of decomposition, including everything from leaf and twig litter on the surface to pure humus.

Ecological Stewardship—Responsible use and protection of the natural environment

Education—Commercial and non-commercial activities that either actively impart knowledge through instructors or passively impart knowledge through self-directed learning when such activities are consistent with the protection of the Conservation Easement Area.

Endowment Fund—A fund required by most states for long-term cemetery maintenance; some cemeteries call it a “perpetual care fund”, “care and maintenance trust fund”, or “long-term restoration fund”.

Final Disposition—The last place a body is intact; the process by which the body is laid to rest

Grave Decoration—Items placed or arranged to enhance the appearance of the grave. Site appropriate native plantings are not considered decoration, but help fulfill grieving families’ need to “leave a mark” that makes the grave prettier. However, true grave decorations that do not fit in with a natural aesthetic are discouraged (some conservation burial sites do not allow them at all). This includes coping (surrounding the grave with an oval of stone), holiday decorations, beer or liquor bottles, framed photos, etc. Cut flowers are encouraged, but not those that contain invasive seeds. Other acceptable grave decorations include transient items such as bird nests, etc.

Green Burial—A way of caring for the dead with minimal environmental impact that aids in the conservation of natural resources, reduction of carbon emissions, protection of worker health, and the restoration and/or preservation of habitat. Green burial necessitates the use of non-toxic and biodegradable materials, such as caskets, shrouds, and urns.

Green Burial Ground—Green burial ground or a green burial cemetery is a generalized term often used synonymously with natural burial ground.

Integrated Pest Management (IPM) System—A system in which biological, cultural, mechanical/physical and/or chemical factors are evaluated to create a long-term pest management plan that minimizes danger to people, property, and the environment; frequently used in green burial cemeteries to enhance the environmental mission.

Interment—Burial of the full body or the cremated remains of the deceased in a grave.

Land Disturbance—The removal of vegetation and duff from the earth by human activity resulting in the exposure of mineral soil where the expanse of exposed mineral soil covers more than fifty (50) square feet and is unrelated to construction, maintenance, repair or reconstruction of any trail or right of way.

Native Plants—Plants that are indigenous to a specific habitat. Native plants include those species understood as indigenous, occurring in natural associations in habitats that existed prior to significant human impacts and alterations of the landscape.

Natural Burial Ground—A type of cemetery that allows full body interment in the ground, without embalming, using a biodegradable container, and without a grave liner or vault. Cremated remains and pet remains may be accepted in natural burial grounds.

Natural Resources Inventory—A document that inventories the natural resources of an area, collects the data in a usable format and interprets the findings. Natural resource inventories provide solid baseline data for long-term monitoring and management and allow for comparisons between existing and desired conditions.

Open Space—Any open piece of land that is undeveloped (has no buildings or other built structures) and is accessible to the public. Green space (land that is partly or completely covered with grass, trees, shrubs, or other vegetation). Green space includes parks, community gardens, and cemeteries.

Outdoor Recreation Commercial or non-commercial recreational uses expressly including, but not limited to, hiking, camping, picnicking, non-motorized cycling and other non-motorized activities, equestrian activities, wildlife observation, physical exercise, assemblies of person outdoors, hunting, fishing and other activities consistent with the protection of the Conservation Values.

Preneed arrangements—Arrangements made prior to death, including gravesite selection. *Preneed arrangements* can be made without pre-paying, although funeral homes and cemeteries usually encourage pre-paying; consumer protection groups recommend not paying.

Plat map—A specialized map that identifies where all the plots will be located. Some green cemeteries do not follow a rigid placement of *plots* on a *plat* grid.

Plot—The space in which a body is buried.

Primitive Amenity—An unenclosed, uncovered structure for use by persons, including, but not limited to, benches, observation platforms, wildlife observation blinds and decks. A Primitive Amenity shall not be connected to any utilities including electrical, communication, water, septic, or sewer services. Living trees, standing dead trees, and fallen trees may be incorporated into the structure of a Primitive Amenity.

Purchase Agreement—A Purchase Agreement is a legal document between two parties, the Seller who wishes to sell a piece of personal property and the Buyer who wants to buy that property. The Agreement describes the terms and conditions of the sale and ensures that both parties will follow through on their promises regarding that sale.

Replacement of Soil—Technique where liquefiable material is removed from the site and replaced with a non-liquefiable material. Well compacted and well graded gravel or soil mixed with cement or other additives is commonly used as the replacement material. Replacement techniques can be used to treat both sands and silts.

Restoration Ecology—The practice of renewing, restoring, or assisting in the recovery and management of degraded, damaged, or destroyed ecosystems and habitat. Restoration cemeteries may have areas in need of environmental restoration of plant systems, or need supplementation to provide optimum

habitat for wildlife to restore the proper balance to the ecosystem within and surrounding the burial ground. Along with improving biodiversity, restoration ecology also involves developing sustainable cultural practices and providing regional and historical context.

Road Right of Way—The area that may be routinely disturbed as necessary for maintaining a road, including the lane of travel, ditches, embankments, pull-offs, stockpiles of road construction aggregates (including, but not limited to, gravel and fill), and parking for vehicles and equipment.

Scenic Values—The importance of a landscape based on human perception of the intrinsic beauty of landform, water form, and vegetation in the landscape, as well as any visible human additions or alterations to the landscape.

Second Right of Interment—The permission given by the lot owner for a second burial to take place on one space.

Section—Portions of cemetery acreage, often visually separated by woods, naturally distinct, or landscaped areas.

Soil Amendments—Materials added to soil to improve its physical or chemical properties.

Surface Area on the Ground—The area of the smallest four-sided polygon hypothetically onto the land underneath a structure that contains all structural elements of the structure, including protrusions or extensions, e.g., cantilevered features, guy-lines decks, overhanging elements, etc., regardless of the area of land occupied by the structural element(s) that actually contact the ground; the rationale for measuring the area occupied by structures using this method is to encourage construction of structures that efficiently use space and thus are more likely to have a lower impact on adjacent soils and habitat.

Sustainable Forestry—Managed forestry plan that balances the needs of the environment, wildlife, and communities with human needs.

Trail—A cleared pathway created and maintained in a manner that does not cause sedimentation in surface water. Certain structures may be incorporated in the structure of a trail, including, but not limited to, ropes, cables, railings, steps made of rock, log steps, hand-holds, ladders, stones, log cribs, ramps, geotextile and ground coverings, gravel, other log or stone structures embedded in the walking surface, structures made from chemically treated lumber, ramps and sign posts.

Trail Amenity—A simple structure constructed from untreated wood, uncoated stone, or of masonry construction that may furnish various benefits to trail users, including, but not limited to, physical comfort, shelter, water, access to a fragile habitat, and/or information. A trail amenity shall not be connected to any utilities except to underground electrical lines.

Wildlife Habitat—Areas distributed horizontally and vertically across the landscape that fulfill the needs of a specific wildlife species for the basic requirements of food, water, reproduction (nesting), and protection against predators and competitors (cover).

Woodlands—Low-density forest forming open habitats with plenty of sunlight and limited shade.

Authorizing Statutes

State statutes and codes that delineate the legal requirements and protections covering conservation easements often have their own article(s).

Prohibited, Restricted and Permitted Uses

Every conservation easement will include some categories similar to the following:

- A. Development Rights
 - a. Divisions, partitions, subdivisions
 - b. Boundary lines; allowable distance from gravesites to waterways or abutting properties
 - c. Development rights forgone
- B. Restrictions
 - a. Excavating, ditching, draining, dredging, mining or drilling
 - b. Exploration for and extraction of oil, gas, minerals, peat, muck, marl, limestone, lime rock, kaolin, fuller's earth phosphate, common clays, gravel, shell, sand, coal, or similar substances
 - c. Excavating soil, gravel, or other materials unless for approved improvements
 - d. Depositing soil, gravel or other materials unless for approved improvements
 - e. Changing the topography
 - f. Storage or dumping of trash, garbage, or other unsightly or offensive materials, hazardous waste or toxic substances
 - g. Polluting surface waters, natural water courses, lakes, ponds, marshes, subsurface water or any other water body
 - h. Altering the natural water level or flow in and over the property
 - i. Extracting water
 - j. Removal, harvesting, destruction or cutting of native plants
 - k. Introduction of non-native plants and animals
 - l. Any commercial, industrial, agricultural, silvicultural, or grazing use
- C. Improvements and New Construction
 - a. Burial Grounds
 - i. Burial allowed
 - ii. Human and/or animal (define, including relationship to the deceased, weight, etc.)
 - iii. Where burial is allowed (not impacting wetlands, groundwater, significant natural features, old growth forest, etc.)
 - iv. Burial density per acre; total number of gravesites on the Property not to exceed #
 - v. GPS coordinates marking each gravesite; mapping; plats or plots
 - vi. Boundaries for burial re: abutters, wetlands, groundwater, trees (determine size, species, etc.)

Here's what you will need to evaluate and negotiate when drawing up a mutually beneficial conservation easement

- b. Roads, Trails, Boardwalks, Bridges, Motorized Vehicles, Car parking
 - i. According to applicable laws
 - ii. Who pays for it - Grantor
 - iii. Minimizes impact
 - iv. Road width
 - v. Bridges and culverts
 - vi. Materials used
 - vii. ADA approved
 - viii. Grantee's approval required
 - ix. Temporary pathways, trails circumstances and restrictions
 - x. Parking area(s)
 - c. Benches, Pavilions, Meeting Houses, Equipment Storage, Other Structures
 - i. According to applicable laws
 - ii. Location determination conforms with Baseline Documentation,
 - iii. Who pays for it - Grantor
 - iv. Materials used
 - v. Minimizes impact
 - vi. Density and distance for benches
 - vii. Necessary zoning/permitting acquired
 - viii. Grantee's approval required
 - ix. Total footprint of any structure determined
 - d. Utility Services and Septic System
 - i. Installation, maintenance, repair, replacement, removal, relocation
 - ii. Electric, gas, water, sewer, public or private utilities, phone, other communication services
 - iii. Grantee's approval required
 - iv. What is prohibited (cell towers, etc.)
 - e. Signs
 - i. Determine what types of signs are acceptable (boundary markers, directional, regulatory, interpretative, kiosks
 - ii. Allowable footprint of signs
 - iii. Allowable burial markers conforming to the nature and character of the property
 - f. Fencing
 - i. Perimeter
 - ii. Interior
 - iii. Wildlife
- D. Water Resources
- a. Wells
 - i. How many, where located, what dimensions
 - ii. Installation, removal, maintenance, replacement subject to required permits
 - iii. No activities allowed that will be detrimental to drainage, flood control, water conservation, erosion control, soil conservation, fish or wildlife habitat preservation
 - iv. Canals, dikes, water courses, disruption, alteration, pollution, depletion, or extraction of existing surface or subsurface water sources (lakes, ponds, marshes, creeks, streams
 - v. No commercial wells

- E. Commercial Activity
 - a. What constitutes commercial activity Section 2031(c)(8)(B) of the Internal Revenue Code
 - i. Commercial activity allowed or not
 - ii. Notwithstanding the foregoing, the use of the property as a nonprofit burial ground shall not be construed as a commercial operation for the purposes of the Conservation Easement
- F. Agricultural Activity (see Habitat Restoration)
 - a. What constitutes agricultural activity
 - b. Terms of agricultural use
 - i. Commercial allowed or not
 - ii. Small nursery to grow native plants for restoration and revegetation purposes
- G. Biocides and Fertilizer
 - a. What constitutes biocides and fertilizers
 - i. Pesticides, insecticides, fungicides, rodenticides, herbicides
 - ii. Use in limited quantities
 - iii. Use to control nuisance Exotic Plant Species
 - iv. Use in non-commercial agriculture
 - v. Use in strict conformance with manufacturer's instructions
 - vi. Use according to best management practices
- H. Removal of Vegetation and Introduction of Exotic Plants and Animals
 - a. Integrated Plant Management Plan
 - i. Circumstances under which removal, destruction, cutting, trimming, or mowing is acceptable
 - 1. Carry out rights reserved elsewhere in the easement
 - 2. Diseased, rotten, damaged, or fallen trees that constitute a safety or health hazard
 - 3. Is necessary to maintain existing roads or trails
 - 4. To control and/or eradicate nuisance exotic plant species
 - ii. What constitutes an exotic pest or nuisance plant, non-native plant or animal species
 - 1. Identify the state and federal resources
 - 2. Identify native endangered species
- I. Habitat Restoration
 - a. The Grantor shall retain and have the right to engage in management and ecological restoration activities to foster, preserve, protect, and restore the natural, ecological, scenic, wildlife and plant features and values of the Property as set forth in the Conservation Easement Stewardship Plan.
 - b. Revenues realized must go back into habitat restoration or other land management activities
 - i. Prescribed burning
 - c. Timber harvesting
 - d. Planting native groundcover and trees
 - e. Restoration and/or repair of soil erosion areas
 - f. Controlled livestock grazing
- J. Recreational Use of the Property
 - a. What constitutes appropriate recreational uses
 - i. Nature photography, wildlife observation, maintenance of Property for non-commercial hiking, cross country skiing, bicycle riding, horseback riding
 - ii. Off road vehicles
 - iii. Hunting, fishing, trapping

- K. Mortgage
 - a. Rights to mortgaging the property, under what circumstances
- L. Exclusive Use
 - a. The right to exclusive use of the Property subject to the rights granted to Grantee in this Conservation Easement.
- M. Dumping
 - a. General understanding of what constitutes trash, soil, liquid, solid waste; unsightly, offensive, or hazardous materials, wastes or substances, toxic wastes, pollutants or contaminants
 - b. Hazardous materials as defined by State law
- N. Motorized Vehicles
 - a. Use of motorized vehicles on roads and paths by cemetery personnel
 - b. Use of motorized vehicles for members of the public
- O. Endangered Species
 - a. Actions or activities that may reasonably be expected to adversely affect threatened or endangered species are prohibited.
- P. Holder/Grantor Consent
 - a. Circumstances and process for soliciting permission to conduct improvements, correct nonconformities, plan revision, plan approvals, or stated written permissions
- Q. Public Access
 - a. Does not convey to the public the right to enter the Property for any purpose
 - b. Grantee may establish the conditions, times, and places of public access and amend these conditions, times and places.

ANOTHER INSTRUMENT FOR ENSURING PROTECTION AGREEMENTS

Some situations call for a separate description of allowable activities on the land in general (the Easement) and the day-to-day practices (the Agreement or Management Plan). Care and maintenance of the grounds (including processes and procedures for implementing various plans), financial administration (such as rates and fees that will change over time), and other areas of specific management are better suited to a more fluid instrument rather than being locked into a legal easement in perpetuity.

“...Other areas of management are better suited to a more fluid instrument rather than being locked into a legal easement in perpetuity.”



For a superior example of a cemetery agreement document, we highly recommend **Foxfield Preserve's Complete Rules** (http://www.foxfieldpreserve.org/wp-content/uploads/CompleteRules_2016.pdf)

WHAT DOCUMENTATION IS CUSTOMARILY REQUIRED

DOCUMENTATION

Some or all of the following documentation may be required or recommended by the easement holder to ensure adherence to the terms of the easement:

“...documentation may be required or recommended by the easement holder to ensure adherence to the terms of the easement.”

Baseline Ecological Assessment

- Provides information, guidance, and support for changes in land management regarding agricultural, forestry, and other activities
- May be conducted on its own or as part of a broader environmental assessment that identifies and evaluates the possible impact on ecosystems and assists in formulating plans that ensure best biodiversity outcomes

Integrated Pest Management (IPM) System

- Evaluates biological, cultural, mechanical/physical and/or chemical factors
- Develops a plan to minimize danger to people, property, and the environment

Monitoring Plan

- Violation stipulations
- Monitoring system, schedule, and defense strategy and capacity
- Description of remedies

Natural Resources Inventory

- Inventories the natural resources of an area
- Collects the data in a usable format
- Interprets the findings
- Provides solid baseline data for long-term monitoring and management
- Allows for comparisons between existing and desired conditions

Stewardship Plan

- Management of native successional hardwood trees
- Management of hydrological restoration
- Wetlands mitigation
- Stewardship goals, objectives, strategies and management responsibilities

RESOURCES

Organizations

Conservation Burial Alliance (CBA) <http://www.conservationburialalliance.org>

The CBA is a collaborative of conservation burial grounds and invested allies that fosters the conservation and sustainable management of land with natural burial for the benefit of people and the planet. Their goal is to provide information and support to those involved in creating more conservation burial spaces throughout the country.

Green Burial Council (GBC and GBCI) <http://www.greenburialcouncil.org>

The GBC and GBCI mission is to inspire and advocate for environmentally sustainable, natural death care through education and certification and to ensure universal access to information and environmentally sustainable death care. The certification wing, GBC, provides standards for all levels of cemetery, with particular attention to conservation level burial. The website is a rich repository of materials and guides to help educate the public and stakeholders.

Land Trust Alliance (LTA) <http://www.landtrustalliance.org>

LTA is the leading nonprofit organization that provides support for regional alliance chapters who agree to adopt standards and practices that represent conservation best practices. As their mission states, they are the “national leader in policy, standards, education and training, we work passionately to support land trusts so they can save and secure more lands now and for future generations.”

Documents

Green Burial Glossary	https://www.greenburialcouncil.org/green-burial-glossary.html
Working Definitions	http://www.conservationburialalliance.org/definitions.html
Burial Ground Standards	https://www.greenburialcouncil.org/our_standards.html
Conservation Best Practices	https://www.landtrustalliance.org/node/165
Start-Up Tips for Green Burial Operators	https://www.greenburialcouncil.org/uploads/1/2/4/2/124231485/start_up_tips_for_green_burial_cemetery_operators.pdf
Opening, Closing and Maintenance	https://www.greenburialcouncil.org/uploads/1/2/4/2/124231485/opening_closing_and_maintenance_of_a_green_burial_grave.pdf
Science Behind Green Burial	https://www.greenburialcouncil.org/uploads/1/2/4/2/124231485/the_science_behind_green_burial.pdf
Conservation Burial FAQs	http://www.conservationburialalliance.org/frequently_asked_questions.html

Books

Harris, Mark, *Grave Matters: A Journey Through the Modern Funeral Industry to a Natural Way of Burial*, (Scribner, 2007)

Herring, Lucinda, *Reimagining Death: Stories and Practical Wisdom for Home Funerals and Green Burials*, (North Atlantic Books. 2019)

Land Trust Alliance, *Land Trust Standards and Practices*, (LTA, 2017), at <http://s3.amazonaws.com/landtrustalliance.org/LandTrustStandardsandPractices.pdf>. Accessed July 28, 2020

Webster, Lee, *et al Changing Landscapes: Exploring the growth of ethical, compassionate, and environmentally sustainable green funeral service*, (CreateSpace, 2016)

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Disclaimer: This document is meant for basic familiarization with typical conservation easements for the lay person contemplating working with a land trust to create an easement on conserved land that includes natural burial. It is not a definitive or complete listing of elements required in easements. Please consult your local land trust for clear direction.