

Public or Charitable Trusts and Protection Against Disposition of Conservation Land

Under Massachusetts law, conveyances of property to charitable or public entities with the qualification that the property is to be held by the grantee “forever” in its in natural and open condition or for conservation purposes creates a charitable trust (if the grantee is a charity) or public trust (if the grantee is a public entity).

This technique may be suitable as an alternative to imposing a CR on land conveyed to a charitable or public entity in order to further ensure the land’s ultimate protection. One question arising from the trust technique is who is entitled to enforce the trust. The Attorney General has this right, and the grantor probably does, but it is not at all clear that any other parties have standing.

Some further observations about the use of the trust technique as an alternative to the imposition of a CR:

- One should not assume that land conveyed to a charitable or public entity with the unwritten intention that it will be preserved in its natural or open state must be so preserved by the grantee. As long as the land is used for a charitable or public purpose, which may include sale for development with the proceeds used for other charitable or public purposes, there may be no legal constraint on conversion or disposition.
- It is not clear that the full fair market value of land can be treated as an income tax deduction if a trust obligation is imposed (it likely cannot be).
- A charitable or public entity cannot unilaterally create a trust on its holdings. A transaction in which the entity transfers title to a selected facilitator (e.g., the same party that might be chosen to hold a CR) and then receives title back subject to the trust obligation ought to be respected, although there are no known examples of such a transaction (or the validity thereof) in Massachusetts.
- The imposition of a trust obligation through a facilitator may be simpler for land trusts than drafting, negotiation and approval of a CR. On the other hand, the very lack of detail in a typical trust provision may create disputes of interpretation later (does creation of a visitor parking area fall within the general trust obligation or not).
- It is not clear whether the imposition of a CR or the creation of a trust obligation provides more effective protection against the charitable or public owner of the land taking action to convert or dispose of the property. The Attorney General has an express role by statute in the case of charitable/public trusts, but has so far acted vigorously in Massachusetts in the enforcement of CRs as well. In either case, the integrity and commitment of the CR holder/trust creator is probably the most important factor.

- Both the imposition of a CR and the creation of a trust obligation are of limited help in resisting the conversion or disposition of the property by eminent domain. Neither prevents eminent domain outright, but each may create certain additional regulatory hurdles to a taking. There is no particular reason to believe that one approach would be more effective than the other.
- Although it is a complicated subject best dealt with in detail elsewhere, the imposition of a CR or the creation of a trust obligation should not reduce the award legally required to be paid in the event of an eminent domain taking. It may create the perception, however, that the land is of lesser value.
- Both the imposition of a CR and the creation of a trust obligation would reduce the value of a property as collateral or as trade land.