

[Back](#)

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When tax time is a walk in the woods

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Land trust, other nonprofits, can't rely just on forms to keep filings up to date

For most people, preparing their annual tax filings means reviewing financial records of the past year and filling out Internal Revenue Service forms. For the volunteers and staffs of nonprofit land trusts, though, it also means quite a few walks in the woods.

"We've got 65 easements, and we need to visit each of those properties at least once a year, in order to be sure they're being maintained," Don Gerber, stewardship committee chairman for the Lyme Land Conservation Trust, said one afternoon this month, just before heading out on one of those visits with Marta and Les Cone, fellow land trust volunteers.

The three spent about 90 minutes that afternoon trekking across two parcels of brambly, rocky forest off Blood Street, following no trail but relying on a network of stone walls, well-creased maps, previously placed boundary signs and pink flags and their own knowledge of the property to guide them. The land trust holds a conservation easement on the property that prohibits development and protects it as a wildlife corridor that connects to Nehantic State Forest, but keeps ownership private, with the family that originally gave the easement.

"We have to make sure the agreement on the conservation document is not being violated," explained Marta Cone, who's responsible for inspecting a half-dozen easement properties each year for the land trust.

Over the past few years, land trusts across the country have had to learn to comply with new, stricter requirements from the IRS regarding conservation easement properties. The push began with the enactment of a 2006 law that sought to curtail abuses of the tax law provision that enabled property owners to take a significant break on their taxes if they gave up certain ownership rights on their properties by granting conservation easements, according to information provided by IRS spokeswoman Dianne Besunder.

Some taxpayers were taking overly large tax deductions based on inflated appraisals of their property values, or modified or disregarded the terms of the original easement so that it was no longer being protected as intended. Additional reporting requirements, which were phased in to give small organizations a few years to adapt, means that land trusts have to inspect easement properties yearly, document each inspection and have records of inspections available in case of an audit. Failure to do so risks property owners having to repay the IRS for the difference in the taxable value of developable versus conserved lands as well as other penalties, and a loss of tax-exempt status for

the nonprofit organization that holds the easement, according to information on the IRS website.

No encroachment

"The IRS also looks for evidence that we have the capability to enforce conservation restrictions," said Linda Bireley, executive assistant of the Lyme land trust. "We have to make sure there's been no encroachment on the property, and that we have the money to take legal action if necessary. The IRS used to ask us just one or two questions on the forms, but now there's a whole long list."

Bireley is one of three people the trust has hired to work part-time because of the new IRS easement rules and the need for more professional record-keeping they required. Files once stored in the unheated attic of town hall are now computerized and accessible, along with maps and other information, to the volunteers who do the annual inspections.

Russell Shay, director of public policy for the Land Trust Alliance, which represents 1,200 organizations nationwide, said the new IRS rules have had both positive and negative effects. Inspecting every property annually is a good practice regardless of the IRS requirements, he said, but many weren't doing it until they were forced to.

"It's a good thing if it gets land trusts to concentrate on the stewardship of the resources they have," he said.

The downside, he said, is that it causes small organizations to devote more time and scarce financial resources toward record-keeping, legal fees to defend easements and training of volunteers in how to do inspections and other bureaucratic and administrative responsibilities instead of toward the main purpose many of the volunteers got involved in the first place - protecting land.

At the Avalonia Land Conservancy, which holds easements on 16 properties in Groton, Ledyard, North Stonington, Stonington, Preston and neighboring towns, the IRS rules have made some members of the group reluctant to accept new easement donations, said Duncan Schweitzer of Stonington, president of the group. Some offers have even been turned down, he said, partly because the group felt the particular property would be too burdensome to police to the extent necessary.

"There is definitely a contingent that would vote not to accept an easement unless it comes with an endowment to provide a legal defense," he said. Property owners can see significant benefits from conservation easements - an acre valued at \$150,000 as developable land could be valued at just \$4,000 or \$5,000 with a conservation easement on it, Schweitzer said. Land trusts have to realize when they consider a donation offer that, along with the sincere altruistic motives the landowner may have in making the donation, they are also gaining financially, and the land trust shouldn't bear unreasonable risks and responsibilities to make that possible, he added.

Annual inspections

The IRS rules also require that before accepting an easement, the land trust thoroughly document and verify its conservation value as a wildlife habitat and the public benefit that would result from its preservation, Schweitzer said. The annual inspections must then validate that there has been no deviation from that, either by encroachment from an abutting landowner with a fence or building, by trees being felled or grassy fields not being maintained against the conservation restriction, dumping or other breach. When Avalonia and Lyme land trust volunteers do an inspection, they notify the property owners and invite them along, sometimes take photographs and document what they see. If violations are spotted, the suspected culprits - whether an abutting property owner who dumped brush or an owner who cleared an area of trees - are reminded with a letter or visit of the conservation restriction agreement.

"I don't quarrel with the IRS' assessment of the problem, it's just a lot of work for small organizations without a big endowment," Schweitzer said. "And it's not as attractive to ask people to donate money towards possibly having to pay lawyers to defend property in the future. That's a hard sell."

George Moore, executive director of the Lyme Land Trust, said when serious problems are found with a conservation easement, it's usually because a new property owner is unaware of the restriction, or doesn't take it seriously. In one such case, pending in New London Superior Court, the Lyme land trust has gone to court to enforce an easement because the new owner, Beth Platner, planted grass in an area that was supposed to be left natural.

"We couldn't turn a blind eye to it and let people do what they want," Moore said. "We have to defend the easement and report it to the IRS."
