

Practical Pointer

Siting Renewables on Conservation Easements: What Land Trusts Need to Know

As the transition to a clean energy system accelerates and renewable energy development pressures increase, land trusts are facing, with far greater frequency, questions regarding renewable energy and conservation easements, with the fundamental question being:

- *When, and under what conditions, can a land trust allow renewable energy development in a conservation easement?*

The fundamental answer:

- *Only when renewable energy development is consistent with the conservation purposes of a conservation easement.*

Allowing renewable energy development on a conservation easement is a complex question. In some situations, renewable energy development may be appropriate on conserved land, while in others, a land trust could determine that it is inconsistent with the easement's conservation purposes and, therefore, not an appropriate activity. In most situations, a land trust should address this issue through clear easement language that allows this activity outright or through a modification and/or a discretionary consent clause that would permit such activity at some future point. In rare cases, after significant due diligence to evaluate the potential impact, land trusts may choose to amend an easement to allow renewable energy, as long as the permitted activity is consistent with the original conservation purposes and there is no impermissible private benefit or private inurement.

Assessing whether renewable energy is an appropriate activity is a site-specific question that can only be answered after careful analysis of the conservation values of a given property and in the full context of an individual project. As with any easement issue, best practices and guidelines, specifically, *Land Trust Standards and Practices* and *Amending Conservation Easements* should be consulted when drafting or amending a conservation easement.

Renewable Energy and Conservation Easements: Key Considerations

1. **Conservation values.** At its core, renewable energy development must be consistent with the conservation purposes of the conservation easement. Depending on what conservation values a land trust seeks to protect, different levels of compatibility will likely exist. For example, if the goal is the protection of endangered songbird habitat, there are likely limited (or no) opportunities to allow renewable energy development while also protecting this habitat. On the other hand, if the goal is farmland conservation, greater flexibility may exist to site renewable energy development while still achieving conservation objectives.
2. **Siting, scope and scale.** Understanding the siting, scope and scale of the proposed development will help a land trust evaluate its impact on the property's conservation values. Important questions to ask include:
 - Where will the project be located?

- What is the purpose of the energy development? Is the energy for use on-site, such as for farm operations and improvements? Or will it be distributed off-site, such as into a local, regional or national grid?
 - What is the size of the development? For personal use (which generally implies smaller scale) or for broader consumption (larger scale)?
 - What is the associated infrastructure and impacts of lines, pipes, roads, pads, water and so forth?
3. **Funding restrictions.** Easements that are partially or completely funded by grants from private foundations or government agencies may be restricted or limited in what the easement can allow. Some state and local officials see energy leases as “double-dipping” and do not support state or local agricultural and open space funding programs that allow renewable energy development on protected or to-be-protected properties. Land trusts need to fully understand the views of funding partners and the potential funding limitations prior to drafting an easement.
 4. **Energy lease terms.** Does the landowner have an existing energy lease on the property? If so, the land trust may need to engage with the energy developer to understand the terms of the lease. While evaluating title encumbrances is critical to any conservation easement transaction, it is especially important with respect to energy leases because understanding and assessing lease terms can be difficult and time consuming. Key issues may include:
 - *Release of parcels.* Under what conditions, if any, can parcels of land (particularly those identified as possessing important conservation values) be released from the lease? What, if any, is the willingness of energy companies to amend existing leases to ensure the protection of the property’s conservation values?
 - *IRS deductibility.* The lease terms may impact IRS deductibility so a land trust and appropriate legal counsel need to review the lease in the context of the regulations. See below.
 - *Project costs.* What are the potential costs and who are the responsible parties for the project expenses (such as transportation, infrastructure and maintenance costs)?
 5. **IRS deductibility.** A land trust needs to understand how easement provisions on renewable energy may impact the potential deductibility of an easement donation. There are two different regulatory prohibitions of inconsistent uses. The first pertains specifically to easements whose conservation purposes include protection of open space, including scenic values (Treas. Reg. §1.170A-14(d)(4)(v)). The second prohibition against the retention of inconsistent uses is applicable to conservation easements regardless of the category of conservation purpose under which they qualify (Treas. Reg. §1.170A-14(e)(2)). It is hard to know what this means for renewable energy development. For example, how many wind turbines (one, two or more?) might be acceptable under the regulations? The answer is unclear. In some cases, it may be necessary for the landowner to forgo a tax deduction. Another option is to leave land areas that may be subject to potentially inconsistent uses out of the easement.
 6. **Landowner goals.** Land trusts will need to listen carefully to landowners and prepare language that reflects their views on renewable energy, recognizing that some landowners may want to reserve the right in order to maintain flexibility while others may want to explicitly prohibit such activity.
 7. **Impermissible private benefit or private inurement.** For existing conservation easements, land trusts need to ensure that any allowable renewable energy development does not present a private benefit that would jeopardize the land trust’s charitable status. As charitable organizations qualified under Section 501(c)(3) of the Internal Revenue Code, land trusts are prohibited from conferring any

benefit on an individual or entity that constitutes private inurement (associated with organizational “insiders”) or an impermissible amount of private benefit. See the resources section and [Practice 2C1b](#) for more information.

8. **Renewable energy tax credits.** If there are tax credits for renewable energy development, who owns them if they are sold in the future or traded into an energy grid? Explicitly address any energy, ecosystem service, carbon or similar credits in the conservation easement deed.

Easement Drafting Considerations

When drafting conservation easements, land trusts can address renewable energy by permitting it directly under certain conditions, such as through a specific reserved right, or generally within standard easement clauses regarding potentially permitted uses. Consider including sole discretion language to enable the easement holder to control the scale, scope and siting of the development to ensure that the conservation values are protected. Tie the exercise of sole discretion to the protection of conservation purposes.

Consider these drafting tips for addressing renewable energy in conservation easements:

1. Place renewable energy development in existing or reserved building sites, particularly solar, and where the renewable energy is being used on site.
2. Limit energy development to on-site use, in most cases. Off-site use will generally require more infrastructure, such as transmission lines, and thus more careful project design and siting to ensure conservation values are protected. It will likely also need an explicit provision allowing this type of commercial use.
3. Avoid permanent structures, and include provisions for removal and site restoration to the satisfaction of the land trust and consistent with the conservation purposes.
4. Use similar language to that permitted by the IRS for the extraction of subsurface minerals (oil and gas development). The regulations provide that when subsurface mining activity is (a) limited, (b) localized and (c) “not irretrievably destructive of significant conservation interests,” it is permitted (see Treas. Reg. §1.170A-14(g)(4)(i)). The regulations also provide the following example: “[A] deduction will not be denied in a case where production facilities are concealed or compatible with existing topography and landscape and when surface alteration is to be restored to its original state.”
5. For wind energy, limit the number of turbines (generally allow one, but more development could be scaled depending on the overall acres being preserved). Be certain to address any associated infrastructure that can be equally destructive, such as roads, lines, pads, surface leveling, lights and so forth.
6. Assess the impact on tax deductibility.
7. Address allocation of any and all credits, whether now existing or future.

See the appendix for sample easement language used by different land trusts. *These clauses are presented as examples and are not necessarily endorsed by the Land Trust Alliance.* For more information on risk balancing and easement drafting see the resources below and [Practice 9E](#).

Managing Renewable Energy on Existing Easements

There are different ways to address landowner requests for siting renewable energy on easement-protected land. Amendments are one possible approach, with all due consideration given to the issues described in *Amending Conservation Easements*. Sometimes, a landowner request isn't really for an amendment at all but for a specific interpretation of the easement language. Some easements contain a discretionary approval provision that allows the land trust to approve, under certain conditions, activities that are otherwise restricted or not specifically addressed by the easement. Some land trusts use a license to permit a specific activity and define limits.

Land trusts may use alternative approaches to address minor issues that do not negatively impact the purposes or conservation values of the easement, do not involve impermissible private benefit nor private inurement and otherwise comply with the law. These approaches are described in more detail in *Amending Conservation Easements*. As with amendments, it is important for land trusts to evaluate the options, risks and benefits of these approaches with experienced legal counsel, follow the Amendment Principles and understand the long-term effect on equitable treatment of other landowners in similar situations. For more information, see also [Practice 11H](#) on amendments and [Practice 11F](#) on approvals and permitted rights. *Regardless of the approach, the proposed renewable energy development must be consistent with the conservation purposes of the conservation easement.*

Additional Considerations for Land Trusts around Renewable Energy

Land trusts see on the horizon the need to have a larger discussion around renewable energy, particularly solar and how it affects their work. Among others, key issues include:

1. Exploring and understanding land trusts' roles in mitigating climate change and transitioning to a clean energy system
2. Using renewable energy development as part of a land trust's revenue diversification strategy – ensuring that development is directed to appropriate places and using the revenue to support programmatic work
3. Actively engaging in buying land that is both appropriate for energy development and has conservation values
4. Assessing the potential for renewable energy development on unencumbered fee lands owned by the land trust

Resources

- *Amending Conservation Easements: Evolving Practices and Legal Principles*, second edition, Land Trust Alliance, 2017.
- *Clean Energy, Green Communities: A Guide to Siting Renewable Energy in the Hudson Valley*, Scenic Hudson, 2018.
- *Conservation Easement Drafting: Pointers for Balancing Risk*, Land Trust Alliance, last revised April 18, 2019.
- *Conservation in a Changing Climate: Renewable Energy Siting*, Land Trust Alliance, 2019.
- *Land Trust Standards and Practices*, Land Trust Alliance, 2017.
- *Model Grant of Conservation Easement and Declaration of Covenants*, 7th edition, Pennsylvania Land Trust Association, 2019.

- *Pointers for Balancing Risk on Conservation Easement Permitted Structures Following the Full Tax Court Decision in Pine Mountain Preserve v. Commissioner*, Land Trust Alliance, last revised April 3, 2019.
- *Private Inurement and Impermissible Private Benefit Prohibitions*, Land Trust Alliance, 2017.
- *Reshaping the Energy Future: Renewable Energy and Land Trusts*, Land Trust Alliance, 2019.

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Appendix

SAMPLE 1

No rights-of-way, easements of ingress or egress, driveways, roads, utility lines, other easements or other use restrictions shall be constructed, developed, granted or maintained into, on, over, under or across the Protected Property without the prior written permission of Grantee, except as otherwise specifically permitted under this Grant and as appear of record prior to the date of this Grant. Grantee may grant permission for Grantor to grant any rights-of-way, easements of ingress or egress, driveways, roads, utility lines, other easements or other use restrictions, if it determines, in its sole discretion, that any such rights-of-way, easements of ingress or egress, driveways, roads, utility lines, other easements or other use restrictions are consistent with the Purposes of this Grant.

SAMPLE 2

Owner's Reserved Rights. The Owner reserves the following rights:

Electric Power Generation. Subject to the process and approvals set forth herein, the right to construct, maintain, repair, improve, relocate and remove facilities used for generation and transmission of electrical power, including but not limited to geothermal, windmills, solar arrays and/or other green (renewable) energy sources. Placement of electrical generation facilities shall be within the Homestead *only* and have minimal visual impact from outside the property boundaries, as determined by the Grantee in its sole discretion. Such facilities shall be limited to those for which the sole purpose is to supply the structures on the Property. Additional facilities are permitted with approval by [Land Trust], whose decision shall be made in its sole discretion and based on its evaluation of the protection of the purposes of this Conservation Easement. All new electrical transmission lines shall be placed underground. No more than 0.25-acre shall be cleared for electric power generation facilities.

Sixty days prior to the commencement of construction of or site preparation for any new, replacement or additional electrical generation or transmission facility, the Owner shall submit to the [Land Trust] in writing for [Land Trust]'s review and approval, a proposed preliminary site plan that shall illustrate the general description of the proposed development, including the layout of the site, a sketch of all structures proposed to be constructed, details of the design of access roads and, if pertinent, plans for the cutting or trimming of trees and other vegetation around and between any of said structures and access roads. Following submission of complete information, which shall include a site map showing all of the items required in the previous sentence, the [Land Trust] shall have a period of 60 days within which to review the proposal and provide written approval or disapproval or further requests for information pursuant to Paragraphs 10 (Requests for Permission), 11 (Discretionary Consent) and 31 (Notices). Construction and site preparation may not begin prior to the issuance of said determination. At the expiration of said 60-day period, if the land trust has not issued a determination, then the request for approval is automatically denied.

SAMPLE 3

WHEREAS, the effects of Climate Change are increasingly noticeable throughout the [Region] and are projected to have negative impacts on the Conservation Values intended to be protected by this Conservation Easement;

WHEREAS, the installation and use of renewable energy and the development of new renewable technologies is consistent with the *[identify any stated governmental objectives]* and may help combat the effects of Climate Change;

Definitions:

“Renewable Energy” is energy that is generated from resources that are naturally replenished at a rate that is greater than or substantially similar to the rate of depletion of the resource, if any, by such energy generation and does not contribute Greenhouse Gases to the atmosphere. Examples include energy generated from sunlight, wind, rain, tides, waves, running water and geothermal heat and production of energy from anaerobic digesters used to convert organic agricultural wastes into biogases.

“Renewable Energy Infrastructure” is any structure or improvement associated with the generation, storage, use and delivery of Renewable Energy, including but not limited to, solar panels, wind turbines, geothermal piping, associated utilities or battery storage facilities and fencing or such other structures or improvements as may be developed in the future to harness Renewable Energy.

Permitted Uses within the Renewable Energy Overlay

With advance written approval of Grantee, Renewable Energy production and associated Renewable Energy Infrastructure for the purpose of generating energy for the agricultural and residential needs of the Property, or for commercial sale, is permitted within the ____-acre Renewable Energy Overlay Area (as defined by Exhibit B). Renewable Energy Infrastructure shall cover no more than a maximum of ____ acres of said Overlay area, and shall be situated to minimize the amount of land that is utilized by said infrastructure.

[Size and location of Renewable Energy Overlay to be determined through in-house analysis of pertinent factors and relative size of conserved property. The preference is for the Overlay to be located in proximity to the Farmstead Complex in order to limit impacts on the remainder of the Property and located off of Prime Soils and Soils of Statewide Significance.]

In seeking Grantee approval, Grantor is required to and shall submit plans for the construction, maintenance and disassembly of Renewable Energy Infrastructure at least 90 days prior to submitting applications for necessary permits and must demonstrate that the siting and use of said Renewable Energy Infrastructure will not impact the Property’s Conservation Values or the Purpose(s) of the Conservation Easement. As part of its approval, Grantee may require Grantor to take steps to mitigate potential impacts to Conservation Values (such as planting screening trees or pollinator friendly plantings). Unless otherwise required by applicable laws or regulations, Grantor is required to post a bond naming Grantee, its successors and assigns as Obligee and payee thereunder, in an amount deemed by Grantee sufficient to cover the future disassembly and removal of Renewable Energy Infrastructure from the Property and to furnish information regarding such bond to Grantee. Until the Renewable Energy Infrastructure is disassembled, Grantor shall maintain a bond acceptable to Grantee at all times and shall renew same prior to expiration of its term without allowing any lapse in coverage.

SAMPLE 4

Subject to the prior written approval and other conditions and limitations as set forth in this Conservation Easement, the Grantor has the conditional right to install wind, solar, geothermal or other renewable (see the definition below) power-generating equipment *for onsite power use only* (referred to hereinafter as "Alternative Power Equipment") to provide energy for agricultural, forest management and conservation activities only and exclusively on the Property. Upon presentation of a plan and subject to the limitation of use by the Grantor and Grantor's family and employees in residence on immediately adjacent abutting land, Grantor may use such power for said uses with Grantee's prior written approval. In addition, the Grantor reserves the right to connect the Alternative Power Equipment to the local power grid and to sell incidental, excess power back to the power grid through a net-metering or similar program. This provision is an exception to the limitations of Sections 2C, 2D and 2H, above. The Grantor is expressly prohibited from and shall not in any way or form purposefully generate excess power to sell to the grid or in any other way sell power for any other uses except as expressly set forth herein.

The prior approval of both the Grantee and the NRCS is required for the operation, use, construction, placement or introduction of any Alternative Power Equipment, which approval may be withheld, conditioned or delayed in Grantee's sole discretion in order to uphold and protect the Conservation Purposes of this Conservation Easement. To request such approval, Grantor shall submit a written request to each such party, which written request shall include a sketch plan showing the proposed location of any Alternative Power Equipment, including utilities and access, dimensional information and information pertaining to construction materials and the proposed use of such equipment and any other relevant material as requested by Grantee. Criteria used by Grantee and NRCS in evaluating a request by Grantor to exercise this reserved right include, without limitation, whether any Alternative Power Equipment (i) is to be used in the accomplishment of the agricultural, forestry, conservation, habitat management and any other Purposes of this Conservation Easement, (ii) would be detrimental to the Purposes of this Conservation Easement, (iii) would be located on prime or statewide important agricultural soils, (iv) location and siting and scale would impede, in the sole opinion of Grantee, the ongoing agricultural use of the Property and (v) sizing is limited to meet no more than the peak demand of that period in which the Property has the greatest energy need for the eligible uses. All activities and construction of Alternative Power Equipment is subject to the impervious surface limitation. The Grantee may withdraw approval and require the Grantor to (i) terminate use of the Alternative Power Equipment and (ii) remove the same and all associated structures if the Grantor abandons use of the Alternative Power Equipment for a period in excess of one year. The Grantor shall obtain all necessary governmental approvals and permits at its sole cost and expense *after* receipt of Grantee's approval of the installation and operation of Alternative Power Equipment, which Grantee may grant, condition or deny in its sole discretion.

Following any separate conveyance permitted by this Conservation Easement, the Alternate Power Equipment shall not apply to each separately owned parcel or tract resulting from the Grantor's exercise of any division right. Rather, the Alternate Power Equipment shall remain with the largest remaining tract of land that includes all the currently existing residential and agricultural structures.

Following the initial installation of any approved Alternate Power Equipment, any later proposed expansion in any manner or respect shall require the Grantee's advance approval following the same process set forth herein.

For the purposes of this Conservation Easement, "renewable power-generating equipment" is any installation or improvement designed to make energy available for collection or conversion from direct sunlight, wind, running water, organically derived fuels, including but not limited to, wood and agricultural sources, waste heat and geothermal sources that can be used without depleting its source, such as, for example without limitation, solar, wind, geothermal and movement of water (hydroelectric and tidal).

SAMPLE 5

Renewable Energy/Ancillary Improvements. Without permission from the Land Trust, other improvements, including but not limited to, facilities for the generation and transmission of electrical power, such as windmills and/or [detached] solar arrays may be built exclusively within the Building Envelope. Generation of any electrical power shall be principally for use on the Property. Ancillary improvements constructed within the Building Envelope count toward the impervious surfaces limitation as set forth herein. Construction of telecommunications towers is prohibited. All energy production plans, construction and distribution contracts and other agreements must be made expressly subordinate to this Easement and to the rights of Land Trust in this Easement to protect the Conservation Values in perpetuity.

[Limit to particular types of improvements, if appropriate. Consider whether to identify the location of these improvements even within the Building Envelope, if large or visible to the public or likely to impact wildlife, to minimize impact on conservation values. Depending on the circumstances, specify height, footprint and other limitations on the improvements and consider including a Land Trust approval requirement or a pre-construction notice requirement. Consider whether to permit telecommunications towers that are built as part of the other structures.]

SAMPLE 6

Ancillary Improvements. Other improvements, including but not limited to, facilities for the generation and transmission of electrical power, such as a windmill and/or methane digesters may be built on the Property only for the use on the Property and only with the approval of the Land Trust, as provided herein.

[Identify the location of these improvements, if possible, to minimize impact on conservation values. Depending on the circumstances, specify height, footprint and other limitations. Consider whether the limit to use strictly on the Property is appropriate or should be extended to adjacent properties under common ownership or another extension.]

SAMPLE 7

Alternative Energy/Communications Structures and Improvements. Structures and improvements necessary to undertake alternative energy activities, such as wind, solar, methane and other similar energy generation activities, as well as communications facilities, such as cell towers or 911 communications towers, are permitted as further described below, so long as they are compatible with the Purposes of this Easement, subordinate to the _____[conservation]_____ use of the Property

and located in a manner that minimizes the impact to _____ [primary conservation attributes, prime or statewide important soils, scenic, riparian, habitat, etc.] _____.

(a) Building Envelope: Within the Building Envelope, Owner may construct structures and improvements limited to flat rooftop panels [and _____] without permission of Land Trust. Other structures and improvements require prior Land Trust approval as set out herein.

[Structures that can be concealed inside or immediately adjacent to existing structures, such as a communications tower that can be inside a silo, may also be permitted without Land Trust approval.]

(b) _____ Area: Subject to the impervious surface coverage limitations set forth herein and the requirement that they affect no more than ___ percent of the _____ Area, such structures and improvements may be built in the _____ Area with the prior approval of Land Trust as set out herein. Land Trust may condition approval upon the posting of a bond providing _____.

[The size, nature and duration of the bond would depend on the structure. A bond may be appropriate for the construction period but less necessary thereafter. Consider also the need for any ongoing insurance obligation for Owner, for example, to address land restoration after a devastating storm. The size and character of the structure dictate the importance of a bond or ongoing insurance obligation.]

(c) Location: Before selecting the location of any site for these structures and improvements, Owner shall give Land Trust an opportunity to participate in an onsite meeting to review proposed locations and any required roads by giving notice as provided herein. Owner shall comply with the _____ State Department of _____ [Agriculture and Markets or Environment as appropriate] _____ guidelines for mitigation for impacts caused by construction and operation of such structures.

[This subparagraph is usually fine if the structure and road are confined to the Building Envelope. If not, or if the envelope is large, then selection of the location should be subject to Land Trust approval. If the Granting Owner has plans to build in the immediate future, then the plans should be defined more specifically in the Easement.]

(d) Easement Governs: All plans, construction and distribution contracts and other agreements shall be made expressly subordinate to this Easement and to the rights of Land Trust to protect the Conservation Values in perpetuity.

SAMPLE 8

Renewable Energy Generation. Construction, use, maintenance, repair and replacement of one turbine for the generation of wind energy may be permitted upon receipt of Land Trust's prior written approval (which may be granted or conditioned or withheld in its sole discretion). When considering whether to issue such approval, Land Trust shall weigh and evaluate, among other relevant factors, the overall aesthetic impacts of the proposed turbine in the context of the surrounding landscape, the environmental impacts and the scope of its anticipated energy benefits, and upon Land Trust's request, Owner shall be required to provide Land Trust with written documentation addressing these and other matters deemed relevant by Land Trust.

[Depending on the circumstances, include height, footprint and other limitations and consider whether to limit the location to a portion of the Property.]

SAMPLE 9

Wind, Solar and Hydropower Energy. To the extent permitted by, and in accordance with, all then-applicable federal, state and local laws, regulations and requirements, Owner may place or construct facilities for development and utilization of wind, solar and hydropower energy resources for _____ [residential agricultural/_____] use principally on the Property; provided, however, that there shall be no more than _____ structures

[The opening clause is often used but is essentially redundant as the Owner must comply with law in any event.]

[that may be located within the “Energy Zone” depicted on Exhibit ____.]

[that may be located anywhere on the Property except in the _____.]

[that may not be located in any location where visible from _____ Road.]

[that may be no more than _____ feet in height.]

Installation of wind, hydropower and solar energy structures shall be with prior Land Trust permission as provided herein, and Land Trust shall take into consideration the impact on scenic and ecological Conservation Values. All plans, construction and distribution contracts and other agreements shall be made expressly subordinate to this Easement and to the rights of Land Trust to protect the Conservation Values in perpetuity. Owner and the Land Trust hereby agree this paragraph is a reasonable restriction under _____ [applicable law] _____.

[Omit one or more of wind, solar and hydropower as appropriate. Consider the risks and benefits of relying in part on “then applicable” laws when their content is unknown when drafting the Easement. Impose any necessary restrictions or limitations in the Easement without assuming laws in the future will do so. The reference to use “principally on the Property” arises from the fact that connection to the electric grid means that excess electricity at any point will flow off the Property while insufficient electricity will be drawn from the grid. The requirement that the facilities be designed to produce electricity for use principally on the Property imposes a limit on size and scope of the facilities.]

SAMPLE 10

Community Commercial Wind Generation. The _____ [insert general location, e.g., “ridge line at the northeast corner” or more specific designation, identify on map exhibit] _____ on the Property may have a sufficient wind resource to be suitable for the generation of electric power. Owner and Land Trust may elect to explore wind energy production collaboratively employing _____ [one / up to / no more than _____] wind turbines in partnership with _____ community with the objective of providing energy to that community and not principally for economic gain. Any such wind energy project, including the scale, location and all other conditions, shall require the prior written approval of both Owner and Land Trust, and either party may in its sole discretion withhold or condition said approval.

[Provide for allocation of any economic benefit. Consider any limits on the size or footprint of the turbines.]

SAMPLE 11

Possible Future Commercial Energy Production. As of the date of this Easement, Granting Owner and Land Trust mutually agree that current technology for commercial wind and solar energy generation, using tall and visually intrusive wind turbines and large arrays of solar panels, is incompatible with protection of the Conservation Values, and therefore, commercial alternative energy production using such technology is prohibited. If alternative energy production technology changes in the future so that alternative energy production on a commercial scale is compatible with protection of the Conservation Values, Owner may seek Land Trust's approval of an alternative energy production plan in accordance with _____ and taking into consideration the impact on scenic and ecological Conservation Values. All plans, construction and distribution contracts and other agreements shall be made expressly subordinate to this Easement and to the rights of Land Trust to protect the Conservation Values in perpetuity.

[Set out the limitations and conditions to suit the land and circumstances.]