

Carbon Rights and Assignment of Carbon Credit Sale Proceeds



Providing Conservation Easement Holders the Potential to Receive Carbon-Related Benefits

The possibility of granting carbon rights to the easement holder may be considered during the development of a conservation easement. This presents substantial complexity that can be avoided by instead giving the holder control over the entity that may receive carbon credits or assigning to the holder some or all of the proceeds of sale of carbon credits.

Guides Addressing Carbon Issues as Related to Conservation Easements

This is one of three WeConservePA guides focused on carbon issues as they relate to conservation easements. The other two guides are:

- [*Addressing Climate Change and Carbon Sequestration in Conservation Easements*](#) (2023, 12 pages)
- [*The Intersection of Carbon Offsets and Conservation Easements*](#) (2023, 5 pages)

Who Is Entitled to Proceeds?

For a particular property, who is entitled to the proceeds from the sale of carbon credits? The landowner is an obvious answer but, if the owner previously sold the timber rights and did not at that time address carbon matters, answering the question becomes challenging (and perhaps impossible to answer in the absence of a court ruling on the specific facts and circumstances).

Acquire Carbon Rights?

Should a land trust seek to acquire all or a portion of the carbon rights when a conservation easement is being established? The Land Trust Alliance's [*Carbon Offsets in*](#)

[*Conservation Easements*](#) describes the complications involved with this.

Assuming that the land trust does indeed wish to obtain full or partial ownership of the carbon credits, this should be accomplished via a separate document for the following reasons:

- The [*Model Grant of Conservation Easement and Declaration of Covenants*](#) and other models are well-tuned to ensure that holders can block activities detrimental to the conservation objectives. They are not designed to address issues that may arise regarding carbon credit ownership. (Microwave ovens and refrigerators are both used in kitchens, but that does not make it sensible to build one into the other.)
- Carbon offset programs are complex and evolving. It is unlikely that an easement document written today will properly account for all the variables associated with ownership of carbon rights in the coming years. If need for change arises, it will be simpler matter to modify a separate carbon credit ownership document than the grant of conservation easement.

Control Who Benefits

Transfer of ownership of carbon rights may present too much complexity to be accomplishable at the time of the

initial grant of the conservation easement. If so, an easy-to-implement substitute is to provide the easement holder the control over what type of entity might ultimately benefit from such transfers. For example, in the [Model Grant of Conservation Easement and Declaration of Covenants](#), expand the permission in §2.02(d) to include the emphasized text at the end

Commitments Regarding Resource Management Practices. Commitments to implement resource management practices consistent with Conservation Objectives and otherwise permitted under this Grant together with the transfer of rights, credits, or offsets (for example, carbon or nutrient credits) arising from or related to such commitments, **but only to Holder or subject to Review, another Qualified Organization.**

Such a permission would only serve to ensure that the rights are placed with the holder or another conservation organization acceptable to the holder. It would not be sufficient for a holder to enter into a carbon offset program. That would require further agreement from the landowner on various matters including permissions for proactively managing the land, not interfering with the land management activities, and assigning responsibility (and liability) for meeting carbon offset program requirements. In the case where ownership of the carbon rights would be shared, agreement would also be needed regarding decision-making, responsibility for managing the land, and the sharing of revenue from the offset project.

Assign Proceeds from Sale

A straightforward approach to provide that an easement holder would benefit in the event of an owner's sale of carbon credits is to assign some or all of the proceeds from said sale to the easement holder. This can be accomplished using the [Model Stewardship Funding Covenant](#). For example, add to §2.1 "Stewardship Funding Arrangements" of the model the following provision:

A Payment equal to ____% of the proceeds derived from the transfer of carbon rights, credits, or offsets otherwise permitted under §2.02(d) of the Grant of Conservation Easement is due to Holder at the time the proceeds of such activities are due to, or otherwise received by, Owners.

The advantage to this approach is that the easement holder need not expend time and money negotiating a carbon credit transaction with a third party. Nor is it necessary for the holder and landowner to sort out responsibilities.

The downside to this approach for the holder is a lack of control over the terms of the carbon credit transaction. This could be mitigated by crafting the easement document to make carbon transactions subject to the holder's review and approval. For example, add "subject to Review" to the permission provided by §2.02(d) of the [Model Grant of Conservation Easement and Declaration of Covenants](#):

Subject to Review, commitments to implement resource management practices consistent with Conservation Objectives and otherwise permitted under this Grant together with the transfer of rights, credits, or offsets (for example, carbon or nutrient credits) arising from or related to such commitments.



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Andrew M. Loza and Lauren Pregmon Tetreault, attorney at law, are the authors.

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