

Land in Common

community land trust

building a collective land base for just & resilient futures in Maine

www.landincommon.org

Community Land Trust Ownership as a Long-Term Land Protection Strategy

A key element of Land in Common’s mission is to “remove land from speculative markets,” protecting it in perpetuity to ensure equitable land access, conservation of habitats, and the preservation of affordable housing and other infrastructure for sustainable, land-based livelihood. But how is this accomplished? As a 501(c)(3) nonprofit corporation owning this land “fee simple” (i.e., with no externally enforceable restrictions), what would stop Land in Common from selling its land at full market value in order to generate funds for other mission-based work? Shouldn’t the land be additionally protected by third-party easements to ensure, at minimum, its non-development in the event of a sale? What makes Land in Common, as a community land trust, a powerful vehicle for the long-term protection of land?

The Limits of Easements

Land in Common is not necessarily opposed to encumbering its land with easements held by separate conservation organizations. We do, however, recognize some important limitations and drawbacks to the easement protection strategy:

- One major drawback of an easement is also its source of strength. Once implemented, it is very difficult to change. Given that we are working in a volatile, unpredictable world with a shifting climate, changing social needs, and evolving understandings of how best to live cooperatively and sustainably with the land, we are cautious about locking land into agreements that require court action to modify.
- In the case of community land trust ownership, easements introduce an additional organization--with its own culture, needs, and internal dynamics--into a picture that is already complex and multi-layered. We are concerned about adding more bureaucracy, dense legal paperwork, and “nonprofit industrial complex” dynamics into the mix.

- While easements do protect the land from certain activities, they do not ultimately de-commodify the land and prevent its resale. Additional or different strategies of protection are needed to achieve this goal.

The Community Land Trust Strategy

Any 501(c)(3) nonprofit organization, including a community land trust (CLT) like Land in Common, can legally sell its land and use these proceeds to support other mission-aligned work. The CLT structure, however, has a number of distinct structural protections against such sales that make it a uniquely powerful vehicle for long-term land protection.

The 99-Year Ground Lease. Most parcels of land held by Land in Common (or any CLT) are leased to residents on a rolling (automatically renewing) 99-year basis. The Ground Lease, which includes land use restrictions as well as provisions to protect affordability of infrastructure, functions as a powerful legal protection for the land. While the CLT could, in theory, sell the land to another entity, the legal encumbrance of the Ground Lease renders this a very unlikely action. A purchaser would have to wait until termination of the lease (which could take hundreds of years!) before being able to use the land for anything other than its current purpose.

One major advantage of the Ground Lease--which is registered like a deed with the county registry--is that, unlike an easement, it can be changed by mutual consent of both parties. As conditions and needs change, the Ground Lease can change. This requirement of consent is also a protection for the land, since both parties are unlikely to agree on changes that would jeopardize the long-term protection of the land for conservation and affordable housing.

Governance Structure. Land in Common's Bylaws require that any sale or transfer of land must be approved by a supermajority (75%) of the organization's membership. This means that any proposal for a sale must be in such strong alignment with our mission--which includes the protection and decommodification of land--that most of our members are in support. This is a very high bar, especially given that our membership is composed of Resident Members (who have a vested interest in protecting land for use by Land in Common) and Associate Members (who have joined solely because they support the values and mission of the organization). Ultimately, any land sales approved by these groups would likely involve situations where a parcel had been gifted to the organization, was deemed un-usable for human residence or low-priority for conservation, was not wanted for use by any BIPOC or other most-impacted community, and could be sold to support higher-priority land acquisitions.

Even in such situations, the organization would have to weigh the values and mission compromise entailed in any land sale.

Core Values and Culture. Land in Common's organization purposes specifically state that we are committed to removing land from speculative markets and protecting it over the long-term for conservation, farming, affordable housing, and community-building. This means that land sales of any kind are highly suspect as a strategy for achieving our mission and enacting our core values. While we are not legally restricted from such action, and while an occasional sale under specific conditions (such as those described above) could potentially be justified, Land in Common is among the least likely types of nonprofits to sell land.

Summary/Conclusion

Land in Common's CLT structure provides powerful protection for land. A strong case can be made that land encumbered by a combination of CLT ownership and a conservation-oriented 99-year Ground Lease is at *least* as protected than land encumbered by a conservation easement. If the goal is not just protection from development or unsustainable practice, but also decommodification (i.e., restriction on sale of the land for any reason), then this land is significantly *more* protected under the CLT model. Clearly, a combination of CLT ownership (with 99-year Ground Lease) and a third-party easement would provide maximum long-term protection; the trade-offs of such a complex arrangement would have to be explored on a case-by-case basis.