

# NEW JERSEY CONSERVATION RESTRICTION AND HISTORIC PRESERVATION RESTRICTION ACT

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## **13:8B-1. Title of act**

This act shall be known and may be cited as the "New Jersey Conservation Restriction and Historic Preservation Restriction Act."

L.1979, c. 378, s. 1, eff. Feb. 5, 1980.

## **13:8B-2. Definitions**

As used in this act:

a. "Charitable conservancy" means a corporation or trust whose purposes include the acquisition and preservation of land or water areas or of a particular land or water area, or either thereof, in a natural, scenic or open condition, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which has received tax exemption under section 501(c) of the 1954 Internal Revenue Code;

b. "Conservation restriction" means an interest in land less than fee simple absolute, stated in the form of a right, restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to retaining land or water areas predominantly in their natural, scenic or open or wooded condition, or for conservation of soil or wildlife, or for outdoor recreation or park use, or as suitable habitat for fish or wildlife, to forbid or limit any or all:

(1) Construction or placing of buildings, roads, signs, billboards or other advertising, or other structures on or above the ground;

(2) Dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials;

(3) Removal or destruction of trees, shrubs or other vegetation;

(4) Excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance;

(5) Surface use except for purposes permitting the land or water area to remain predominantly in its natural condition;

(6) Activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or fish and wildlife habitat preservation;

(7) Other acts or uses detrimental to the retention of land or water areas according to the purposes of this act.

c. "Local unit" means a municipality, county or other political subdivision of this State, or any agency thereof.

d. "Historic preservation restriction" means an interest in land less than fee simple absolute, stated in the form of a right, restriction, easement, covenant, or condition, in any deed, will or other instrument, other than a lease, executed by or on behalf of the owner of the land, appropriate to preserving a structure or site which is historically significant for its architecture, archeology or associations, to forbid or limit any or all:

(1) Alteration in exterior or interior features of such structure;

(2) Changes in appearance or condition of such site;

(3) Uses of such structure or site which are not historically appropriate;

(4) Other acts or uses detrimental to the appropriate preservation of such structure or site.

L.1979, c. 378, s. 2, eff. Feb. 5, 1980.

### **13:8B-3. Acquisition and enforcement of conservation or historic preservation restrictions**

A conservation restriction or an historic preservation restriction may be acquired by the Commissioner of Environmental Protection in the name of State, or by any local unit, or by any charitable conservancy in the same manner as other interest in land may be acquired by gift, purchase or devise and, in the case of the State or local unit, by condemnation. Such restrictions may be enforced in the same manner as other interests in land, and shall entitle representatives of the holder of such restriction to enter the land or water area involved in a reasonable manner and at reasonable times so as to assure compliance with the provisions of said restriction.

L.1979, c. 378, s. 3, eff. Feb. 5, 1980.

### **13:8B-4. Privity of estate or contract; enforceability of restrictions; recording**

No conservation restriction or an historic preservation restriction held by the State or a local unit or by a charitable conservancy, shall be unenforceable by reason of lack of privity of estate or contract, or lack of benefit to particular land, or an account of the benefit being assignable or being assigned to any other governmental body or charitable conservancy with like purposes. All such

restrictions shall be duly recorded and indexed in the registry of deeds for the county where the land lies so as to affect its title, in the manner of other conveyances of interests in land, and shall describe the land subject to said restrictions by adequate legal description or by reference to a recorded plan showing its boundaries.

L.1979, c. 378, s. 4, eff. Feb. 5, 1980.

### **13:8B-5. Release of restrictions; public hearing**

A conservation restriction or an historic preservation restriction may be released in whole or in part, by the holder thereof, for such consideration, if any, as the holder may determine, in the same manner as the holder may dispose of other interests in land, subject to such conditions as may have been imposed at the time of creation of the restriction; provided, however, that prior to any release, a public hearing shall be held, after notice by publication thereof at least twice in each of the 3 weeks next preceding the date of such hearing in a newspaper of general circulation in the municipality or municipalities in which the land is situated. The hearing shall be held by the governmental body holding the restriction, or if held by a charitable conservancy, by the governing body of the municipality in which the land is situated.

L.1979, c. 378, s. 5, eff. Feb. 5, 1980.

### **13:8B-6. Approval of commissioner of environmental protection**

The provisions of section 5 of this act notwithstanding, no conservation restriction acquired pursuant to this act shall be released without the approval of the Commissioner of Environmental Protection. Approval of releases shall be evidenced by certificates of the Commissioner of Environmental Protection and shall be recorded in the same manner as the restriction itself. In determining whether the release should be approved, the Commissioner of Environmental Protection shall take into consideration the public interest in preserving these lands in their natural state, and any State, regional or local program in furtherance thereof, as well as any State, regional or local comprehensive land use or development plan affecting such property.

L.1979, c. 378, s. 6, eff. Feb. 5, 1980.

### **13:8B-7. Valuation of land subject to restriction**

The existence of any conservation restriction or historical preservation restriction acquired pursuant to this act shall be considered by local assessors in establishing the full value of any lands subject to such restriction.

L.1979, c. 378, s. 7, eff. Feb. 5, 1980.

### **13:8B-8. Construction**

Nothing in this act shall be construed to imply that any restriction, easement, covenant, or condition which does not have the benefit of this act, on account of any provision hereof, is unenforceable. Nothing in this act shall diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain or otherwise and to use land for public purposes.

L.1979, c. 378, s. 8, eff. Feb. 5, 1980.

### **13:8B-9. Severability**

If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

L.1979, c. 378, s. 9, eff. Feb. 5, 1980.