



Conservation Easements

What is a Conservation Easement? A conservation easement is a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. Conservation easements allow landowners to continue to own and use their land, sell it or pass it on to heirs, and protect the important natural features of their property.

When you donate a conservation easement to a land trust, you voluntarily give up some of the rights associated with the land in order to protect its conservation values. Conservation easements are very flexible agreements. An easement on property that is home to rare wildlife might prohibit any development, for example, while an easement on a working farm might allow continued farming and additional agricultural structures. An easement may apply to all or a portion of a property and need not require public access.

Conservation easements are designed to benefit the public by forever protecting conservation values. Therefore, they are perpetual agreements. Future owners will be bound by the terms of the easement. The land trust or organization holding the easement is responsible for making sure the terms of the easement are upheld.

Conservation easements can be donated or sold. If a donation meets the federal tax code requirements as a qualified conservation contribution, it can be claimed as a tax-deductible charitable donation.

This fact sheet covers some conservation easement basics. Interested landowners should consult with their own financial and legal advisors to learn more about how a conservation easement might help them meet their conservation and financial goals.

Q. Who can “hold” a conservation easement?

A. A qualified nonprofit, tax-exempt conservation organization - such as a land trust or conservancy - may hold a conservation easement, as can federal, state, or local units of government.

Q. Who decides what restrictions are included in a conservation easement?

A. The landowner and the land trust or other easement holder decide together what is needed to protect the land's conservation values and meet the financial and personal needs of the landowner's family. If a conservation easement is purchased using particular grant funding, grant program requirements may also influence what the easement restricts or allows.

Q. If I donate a conservation easement, does the land trust have an ownership interest in my land?

A. No. Conservation easements are non-possessory interests in real property. Once an easement is conveyed, the only thing the easement holder “owns” is the legal responsibility to ensure that the terms of the easement are upheld.

Q. What are the easement holder's roles and responsibilities?

A. When a land trust or government entity accepts a conservation easement, it takes on perpetual obligations to monitor the property and enforce the easement terms. Once an easement is established, the land trust documents the site's conservation values, performs periodic site inspections to ensure all the easement's conditions are being honored, and keeps all future owners of the site informed of the easement agreement.

In the event that the terms of an easement are violated, the easement holder is accountable for making sure any damage to the conservation values on the land is repaired. The easement holder has the right and responsibility to take legal action, if necessary, to enforce conservation easements.

Q. Does a conservation easement grant public access to land?

A. Conservation easements do not necessarily grant public access, although public access to protected land can be a stipulation of an easement if that is mutually acceptable to the landowner and the easement holder.

Q. What effect does a conservation easement have on a landowner's ability to sell, develop, or pass the land to heirs?

A. While restrictions defined in a conservation easement run with the property forever, land protected in this way can be sold, passed to heirs or otherwise transferred.

Q. What are the financial or tax benefits of donating a conservation easement?

A. The value of a conservation easement donated to a qualified organization is deductible for tax purposes if it meets federal tax code requirements. There are also rules in the federal estate tax laws that favor property protected by conservation easements. (See Gathering Waters Conservancy's information sheet, *Tax Benefits of Working with a Land Trust* for additional information).

Q. How is the value of a conservation easement determined?

A. The value of an easement is the difference between the property's fair market value before and after the conservation easement is conveyed. Easement values vary greatly; in general, the highest value easements are those placing broad restrictions against development on open space under intense development pressure.

The value of conservation easements is heavily influenced by the specific terms of each easement. Therefore, any attempt to "ball park" the value of an easement before those terms are defined is speculative, at best. Conservation easement values, either for purchase or for tax-deduction purposes, must be determined by a qualified land appraiser and must meet specific appraisal requirements.

Q. Will a conservation easement reduce property taxes?

A. Land subject to a conservation easement may see a reduced assessment. Under Wisconsin law, local property tax assessors are required to consider the effect of a conservation easement when setting the taxable value of the property. But in practice, assessments of eased land have varied widely in the state.

Q. Can a conservation easement be undone?

A. Only in rare circumstances and only by judicial decision can a conservation easement be extinguished. Easements should be understood as permanent agreements.

For More Information

Local land trusts are the best source of information about how a conservation easement might be used to protect your property. To find a Wisconsin land trust near you, visit the land trust directory at

www.gatheringwaters.org/about-land-trusts/

The Land Trust Alliance publication "Conservation Options: A Landowners Guide" is available for purchase from www.lta.org/publications

Landowners considering a conservation easement should seek the advice of an attorney with conservation easement experience.

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