



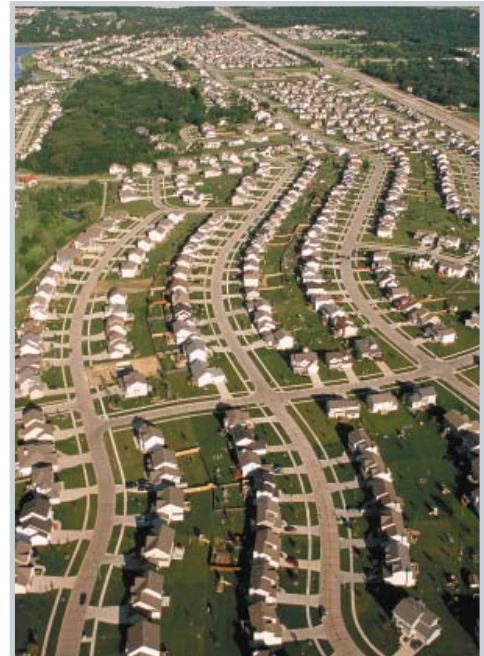
Protecting Land For Future Generations



a Division of Southwestern Illinois RC&D

PURSUING A CONSERVATION EASEMENT

Information on Your Opportunities and Benefits
For Protecting Farmland, Forests and Open Space



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Introduction

This guidebook is intended to help landowners understand one of the most flexible and effective means available to conserve and protect private property – the conservation easement. A conservation easement is a legal agreement that ensures a property will be managed according to the landowner’s wishes for years into the future and may also qualify the landowner for tax benefits. Every conservation easement document is individually crafted and reflects the special conservation qualities of the land protected and the wishes of the landowner.

The Southwestern Illinois countryside is rapidly changing as urban expansion continues to result in the loss of farmland, forests, and other natural areas that served as open space as well as providing diverse conservation benefits. As the land is converted, these conservation values are permanently lost to present and future generations. Conservation easements serve as one tool to help protect these natural resources.



This guidebook provides guidance, facts, and options on the process of developing a conservation easement. It provides background information on the advantages and administrative requirements of conservation easements and attempts to outline the process that a landowner will use if interested in this method of protecting land. In every case, a landowner will need to consult with their attorney and/or financial/estate planner to evaluate the specific impacts on their situation. Entering into a conservation easement is a permanent commitment and as such, requires an in depth analysis of the benefits and obligations before the execution of an agreement.

What is The Land Conservancy (TLC), a Division of the Southwestern Illinois Resource Conservation & Development, Inc. (RC&D)?

The Land Conservancy (TLC) is a program under the Southwestern Illinois RC&D designed to hold conservation easements to protect farmlands and other natural resources in the Metro-east area. The program meets the IRS requirements as a qualified non-profit, conservation organization that can legally hold conservation easements. The Land Conservancy program was adopted by the RC&D Council (governing body) in July 2003.

The Southwestern Illinois RC&D is a not-for-profit corporation established in 1989 to address regional natural resource concerns and to improve the quality of life in Bond, Clinton, Madison, Monroe, Randolph, St. Clair, and Washington Counties in Illinois. A Council of 22 members from these counties governs the RC&D. County Boards and local Soil and Water Conservation Districts have representatives on the Council as well as one member at-large from each county. Some of the goals of the Council are to participate in the research and dialogue on regional growth issues, encourage public involvement, and develop proposals/programs to address urban sprawl. The Land Conservancy is one of these initiatives.

What is a conservation easement?

A conservation easement is a voluntary, legal agreement between a landowner and a non-profit land trust/conservancy or government agency that permanently limits a property’s uses in order to protect its conservation values. With a conservation easement the landowner retains legal title to the property and determines the types of land uses to continue and those to restrict.

When you “own” land, you also “own” many rights associated with it, such as the right to harvest crops or timber, build structures, or subdivide the land. You also “own” the right to not harvest crops or timber, not build structures, and not subdivide the land. To donate certain portions of these rights for the purpose of conservation, while retaining other rights, a landowner grants a conservation easement to a government agency or non-profit conservation organization such as The Land Conservancy.

A conservation easement is a perpetual restriction on the use of the land, and landowners should be fully aware of its implications. Landowners should consult their attorney and/or estate planner for assistance on specific legal and financial questions relating to a conservation easement.

The donation of a conservation easement to The Land Conservancy, or other qualified entity, may qualify as a charitable contribution. As such, it may reduce income, estate, gift, and property taxes. These are discussed in more detail in this booklet.

How does a conservation easement work?

The following are general examples of the types of uses that **can** be allowed with a conservation easement:

- ⊗ Continued agricultural practices
- ⊗ Selective timber harvest
- ⊗ Construction of additional family residences, if compatible with the conservation objectives
- ⊗ Wildlife and aquatic restoration efforts
- ⊗ Any and all uses not specifically prohibited

The conservation easement document spells out what specific activities will and what will not be allowed on the property. Each conservation easement is tailored to protect each property's unique conservation values while meeting the financial and personal needs of the landowner. The terms of the easement do not in any way negate or modify local, state, or federal law.

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- Selective timber harvest
- Construction of additional family residences, if compatible with the conservation objectives
- Wildlife and aquatic restoration efforts
- Any and all uses not specifically prohibited

The following are examples of types of uses that are generally **not allowed** with a conservation easement:

- ⊗ Intensive subdivision for residential or commercial purposes
- ⊗ Surface mining
- ⊗ Activities resulting in water pollution or soil erosion.
- ⊗ Non-agricultural commercial activities except home businesses
- ⊗ Any or all uses which may undermine the conservation aims of the easement

A conservation easement does not require that there be public access to the property, although public access can be allowed if desired by the landowner.

The landowner should plan for the easement process to take from 6-9 months. The process typically includes: a review of the property; a baseline inventory and evaluation of conservation values; a title report; an appraisal; a mineral report; negotiation of terms of the easement; development of a conservation plan for the property; approval from The Land Conservancy, a Division of the Southwestern Illinois Resource Conservation and Development Council; and recording of the executed completed easement.

Why use a conservation easement?

Landowners donate conservation easements for a variety of reasons. First and foremost in most donors' mind is their love and appreciation for their land and their desire to see the land remain as they have always known it. As they think about what will become of the land in the future, some people want to ensure that their property remains intact after they've gone, and that their family can inherit the land and enjoy all the same values that previous generations enjoyed.

Landowners are also concerned about maintaining their property's long-term agricultural productivity. The economics associated with farm ownership are changing and fewer family-owned properties serve as the primary source of a family's income. Landowners must also contend with the increasing tax burden associated with property ownership. Estate taxes, property taxes and the financial incentive to sell for urban development are all factors that affect land use decisions.

Conservation easements enable landowners to protect resources they value for their children and future generations while maintaining private ownership. Conservation easements are generally donated to nonprofit organizations, like The Land Conservancy, or units of government. The donation of a conservation easement can have potentially significant tax benefits; these are discussed later in this handbook.

What are the legal requirements of a conservation easement?

A conservation easement is but one of the rights that come with property ownership. By using a deed in the same manner by which a life estate may be created; an ingress/egress easement placed upon land; or oil, gas, mineral, or water rights are sold; a conservation easement can be created. It is a **voluntary legal agreement** between landowners and another entity, frequently a governmental entity or a non-profit organization such as The Land Conservancy.



Conservation easements are created through the use of a deed, and filed on record with the County Recorder. The agreement permanently binds both the present and future property owners, both that of the donor and their heirs and assigns, and also of the receiving organization. It must be legally binding and enforceable by parties on both sides of the transaction. The landowner and the qualified easement holder must both be in a position to enforce its terms. This also recognizes the on-going permanent legal obligation of the donee to conduct periodic inspections.

One of the most important aspects of the conservation easement is that it must be permanent. If it is not permanent, it will not qualify for IRS tax benefits. There are lesser conservation easements that may be utilized pursuant to State law, for a period of years, but they will not yield the IRS tax benefits.

The conservation easement must restrict development. Typically, the agreement restricts the right to develop the property into commercial or residential subdivision and may place limits on the use of the land; such as timber cutting or construction of a landfill.

Another requirement for a valid conservation easement is that it has a valid conservation purpose as defined by Internal Revenue Code 170 (h)(4)(a). Valid conservation purpose means the preservation of land for outdoor recreation; the protection of natural habitat of fish, wildlife, or plants; the preservation of open space (including farmland and forest land); or the preservation of a historically important area.

The conservation easement must protect the conservation purposes for perpetuity which also means no surface mining is permitted in order for the easement to comply with the definition of "Exclusively for Conservation Purposes" as specified in the IRS code.

Land included in a conservation easement is subject to the power of eminent domain. A conservation easement could, however, add merit to a challenge of a land taking for economic development purposes. The conservation easement would document the fact that public benefits were associated with the long-term land protection agreement.

How can the land be used and managed if placed in a conservation easement?

The property can be utilized as outlined in the conservation easement provisions. The Land Conservancy will work with the landowner in developing a conservation plan for the property as part of the easement. The conservation plan contains flexible goals and objectives relating to the conservation of the property's natural resources and cultural features. Farmland and forests can continue to manage for production of agricultural and forest products under the guidelines of the conservation plan. Plans can be updated as needed to add new technologies and address changes in conservation uses with agreement of both the landowner and the Land Conservancy.

How are conservation easements enforced?

The easement runs with the property regardless of ownership. Legally, the donor (landowner) grants to the easement holder (the donee) the rights necessary to enforce the terms of the easement. The holder (donee) will monitor the easement by inspecting the land regularly (yearly in most cases) and talking to the landowner (donor) about future plans in order to avoid conflict with the easement. If a future owner or someone else violates the easement, the easement holder will take action to have the violation corrected, including going to court if necessary. Easement holders typically ask landowners for a financial contribution (Stewardship Endowment) to a stewardship fund to ensure the ability to monitor and enforce the easement in perpetuity.

How will a landowner be assured that the provisions of the conservation easement will be enforced for perpetuity?

The holder (donee) of a conservation easement is responsible for making sure the provisions of the easement are carried out for perpetuity. This usually requires an annual inspection of the property and may involve other administrative or legal activities if necessary to address any violations of the terms of the easement. To fulfill these responsibilities The Land Conservancy will need to have staff assistance available for future years. To fund this long-term commitment a Stewardship Endowment is requested from the landowner (easement donor) that will be placed in a restricted fund to pay for these future staff expenses.

The Land Conservancy has adopted a formula to determine the amount for the requested Stewardship Endowment. The endowment amount is 1% of the total conservation easement value over \$150,000 with a minimum of \$3,000 per easement. The total easement value is the difference in the market value of the property before the conservation easement is put in place and the property value after the conservation easement is executed.

Example calculation: A 100-acre parcel has a market value of \$1,000,000 for residential development. A conservation easement is executed to keep the land in farmland/open space. The restricted property value is now appraised at \$300,000. The conservation easement value is the difference or \$700,000. The Stewardship Endowment requested for this property would be 1% of the conservation easement value over \$150,000, or \$700,000-\$150,000 = \$550,000 X 1% = \$5,500. The Stewardship Endowment donation would be \$5,500 to fund the long term monitoring of this property. The following is a summary of these calculations:

Market Value	\$1,000,000	
Value after Easement	\$300,000	
Value of Easement	\$700,000	
Minus \$150,000 =	\$550,000	
1% of \$550,000 =	\$5,500	Requested Stewardship Amount

The Stewardship Endowment contribution is considered a donation and as such may be tax deductible.

Other Commonly Asked Questions about Conservation Easements

1. *Does every easement qualify for an income tax deduction?*

No. To qualify as a charitable contribution, conservation easement donations must:

- Be perpetual,
- Be donated to a qualified organization, and
- Meet one of the “conservation purposes” tests of the Internal Revenue Code

2. *Does every easement have to be perpetual?*

For the donation to qualify for income and estate tax benefits, the conservation easement must be perpetual and apply to all future owners of the property. Some programs do purchase easements for a limited time period, but those easements would not qualify for income and estate tax benefits.

3. *Can easements be purchased?*

Yes, this is typically known as “purchase of development rights” or PDR. This conservation method pays willing landowners to restrict development of their land. After selling the development rights, the landowner retains all other rights of ownership, including water rights, using the land for agriculture or conserving it, preventing trespass, or selling or transferring the land to others. Typically, landowners sell their development rights to a private conservation organization or government entity. These organizations do not acquire the right to build anything on the land, but only the right and responsibility to limit development of the property as described in the provisions of the easement. Public access is not permitted without landowner consent.

PDR programs generally pay landowners the difference between the value of the land as restricted and its value on the open market. This is usually determined through a “before and after” real estate appraisal.

4. *What are the “conservation purposes” recognized by the Internal Revenue Code?*

The IRS Code Section 170(h) requires that conservation easement donations meet one or more (but not all) of the following conservation purposes:

- Protects relatively natural habitats of fish, wildlife, or plants;
- Preserves open space – including farms and forests – either for scenic enjoyment or in keeping with a clearly delineated public policy;
- Preserves land for public outdoor recreation or education, or
- Preserves historically important land or certified historic structures.

5. *Can a conservation easement protecting open space in a real estate development qualify for an income tax deduction?*

No tax deduction will be allowed if the donation is made under compulsion, or in exchange for a benefit that the landowner expects to receive. Also, charitable income tax deductions for real estate developers are generally limited to the tax basis of the property.

6. *Does a conservation easement grant public access to my property?*

No. Landowners retain control of access to their property. They may choose to allow access to specific groups or the general public in their conservation easement agreement, but are not required to do so.

7. *Can I still sell my property?*

Yes. Property with a conservation easement can be bought, sold, and inherited. However, the conservation easement is tied to the land and binds all present and future owners to its terms and restrictions.

8. *What will a conservation easement mean for my children?*

A conservation easement may reduce estate taxes paid by heirs. Future landowners, including family members, will abide by the terms of the conservation easement agreement and will continue the relationship with the conservation organization that holds the easement. Families should consider the trade-off between immediate tax benefits from reduced property value and permanent restrictions on the land use. Professional assistance is available and recommended for families considering this evaluation.

9. *What if the property is owned by more than one person?*

All owners of a property must agree to the terms of the conservation easement before it can be legally granted.

10. *Can I still build on my property?*

The landowner may retain specified development rights in a conservation easement agreement. For example, a conservation easement protecting a farm can allow construction compatible with agricultural operations as well as changes in crop selection or management practices. A conservation easement can specify the location, size, and type of one or more residences or other development on a property.

11. *What if my property is mortgaged?*

In order for a donated conservation easement to qualify for an income tax deduction, the landowner must acquire a mortgage subordination agreement from the mortgage holder. With this document, the mortgage holder agrees to follow the terms of the conservation easement in the event of foreclosure.

12. *What if I don't own the mineral rights to my property?*

This is a complicated issue that should be discussed with professional advisors. However, a landowner who does not own the mineral rights to his or her property can qualify for income or estate tax benefits if:

Ownership of the mineral rights has been separated from the land and remains separated today; and;

The owner proves that the probability of surface mining occurring on the property is "so remote as to be negligible".

13. *Where are conservation easements recorded?*

Like a deed and other types of easements, conservation easement documents are recorded with other land records in the county in which the property is located.

14. *Can conservation easements be changed or revoked?*

Because conservation easements qualifying under IRS regulations are designed to be permanent, landowners should assume that it will not be possible to revoke an easement. However, conservation easements can be amended if:

Both the easement holder and the landowner agree to the terms of the change; and

The IRS recognized “conservation purpose” of the conservation easement is not affected.

15. *Can a conservation easement be donated by will?*

Yes. The landowner must contact the intended easement holder before conveying the easement by will to ensure that the organization will accept the donation. If the easement qualifies under federal tax law, its value is subtracted from the landowner’s taxable estate, reducing estate taxes for heirs. Also under Federal law, the executor or heirs of an estate can donate a qualified easement after the death of the landowner, even if the landowner’s will does not donate an easement. A landowner who might want their executor or heirs to be able to make this donation should clarify the intent on this matter by stating in their will that the executor and heirs have this power.

16. *Is a conservation easement appropriate for every landowner?*

Conservation easements are designed to meet the site-specific needs of the individual landowner and land trust. They may not, however, be appropriate for every situation. Landowners considering an easement should consult with family members, professional tax and legal advisors, and a land conservancy/trust representative to determine whether this tool will help accomplish one’s long-term conservation and economic goals.



Financial Benefits of Conservation Easements



The desire to protect your land is the primary reason for donating a conservation easement to the Land Conservancy, a Division of the Southwestern Illinois RC&D, Inc. However, both federal and state tax laws provide benefits to landowners who protect natural or historic lands and it may be these tax incentives that make it possible to give generously and accomplish significant land protection. Conservation easements are not suited for every situation; it is important that landowners consult tax professionals or their attorney for more specific information.

A conservation easement donation can qualify as a charitable contribution if:

1. It is granted in perpetuity and;
2. It is granted to a qualified organization, either
 - A. A non-profit, 501 (c)(3) charitable organization like the Land Conservancy, or
 - B. A local, state, or federal public agency, and;
3. It achieves at least one of the following:
 - A. Preserves land for public outdoor recreation or education,
 - B. Protects relatively natural habitats of fish, wildlife, or plants,
 - C. Preserves open space-including farms or forests-either for scenic enjoyment or in keeping with a clearly delineated public policy, or
 - D. Preserves historically important land or certified historic structures.

For tax deductions on donated conservation easements, landowners must obtain an appraisal by a qualified appraiser. The appraiser determines the value of the property before and after the easement restrictions are applied. The difference between the two values is the amount of the charitable gift for tax purposes. The Land Conservancy can provide you with a list of qualified appraisers in Southwestern Illinois, but cannot provide the appraisal. The appraisal cost is a necessary expense if you want to pursue a charitable tax deduction.

Federal Income Tax Deduction

The federal income tax benefits of donating a conservation easement are similar to those of making other charitable contributions. A landowner may be able to deduct up to the full value of the conservation easement from his or her federal income taxes. The value of the easement is determined using the procedure outlined above.

In general, the value of a conservation easement donation is greatest in areas where development pressure is most intense and lower in remote areas. Likewise, a conservation easement that prohibits any development will have a higher value than an easement that permits a property to be divided or developed.

A tract of land may be worth \$160,000 as a potential residential development, but only worth \$60,000 for agricultural production. If a landowner donated a conservation easement that prohibited new construction on his property, he would be making a charitable contribution of \$100,000. The landowner may then be eligible for up to \$100,000 in federal income tax deductions.

If the conservation easement meets IRS criteria, the landowner may deduct the full value of the conservation easement donation from his or her adjusted gross income, up to 30 percent of the landowner's income for the year of the gift. If the donation exceeds this amount in the year of donation, the excess balance of the donation may be deducted for up to five succeeding years, subject to the same 30 percent limitation. However, for clarity, this calculation has been simplified. The actual results may be different, because of the complexity of the tax code.

A landowner with a \$60,000 adjusted gross income donates a conservation easement worth \$100,000 to a land trust. The landowner can deduct 30 percent of his \$60,000 income or \$18,000, in each of years 1-5 and the remaining \$10,000 in year 6. This amount is deducted from the landowner's Adjusted Gross Income in the same manner as other charitable donations.

Example:	
Adjusted Gross Income(*AGI)	\$60,000
30% of AGI	-\$18,000
Adjusted AGI	\$42,000

In some situations, landowners may opt to use the “step down election” which increases the limit of the deduction from 30 percent to 50 percent of an individual's adjusted gross income. However, the step down election generally requires that the deduction be based on the property's “tax basis”, usually the amount paid for the property when purchased. Landowners should discuss the implication of both the 30 percent and 50 percent deduction limits with tax professionals.

Conservation easements can be phased in on portions of the property over time, should the value of the charitable donation exceed a landowner's ability to use the income tax deduction over the allowed six years. Subject to certain limitations, some of the expenses incurred by a landowner in the donation process, including the cost for appraisals, surveys, tax advise, legal review and title insurance, can also be deductible.

Estate Taxes

To calculate the value of inherited property for estate purposes, federal law requires that the value of the land be based on that property's “highest and best use”, instead of actual use. For example, a landowner owns a small family farm near a growing city that might be more valuable as a residential development. When the landowner dies, taxes on the property will be based on the land's value as several potential home sites, even if the heirs do not intend to develop.

A conservation easement can place restrictions on use of a property that limit its “highest and best use”. Because the property's “highest and best use” is restricted, its value and the estate taxes are reduced accordingly. If the landowner donates a conservation easement on the family farm that prohibits the construction of new home sites, estate taxes on the land would be based on the land's agricultural value rather than a potential residential development. As noted earlier, there are limits on the income tax deduction for a conservation easement donation, but there are no such limits for estate tax purposes, so the savings can be substantial.

To realize estate tax benefits, landowners should donate the conservation easement during their lifetime, or in a legally valid will, or they should specify in their will that their heirs or estate executor has the power to donate after their death. Under federal law, in certain circumstances, executors or heirs can donate an easement within a period after a landowner's death and qualify for land value reduction. A landowner intending to convey a conservation easement by will should contact the potential holder to ensure the organization will accept the donation.



Example: A widowed landowner has property located near a growing suburban community. The property has a fair market value of \$1,200,000 and the landowner donates a conservation easement to a local land trust that reduces the property's value to \$700,000. Assuming the landowner has \$1,800,000 in taxable assets in addition to the property and that no prior taxable gifts have been made, the effect of the conservation easement on estate taxes for heirs would be as follows:

Estate Value With and Without Conservation Easement

	Without Easement Donation	With Easement Donation
Value of the land	\$1,200,000	\$700,000
Other valuable assets	\$1,800,000	\$1,800,000
Total taxable estate	\$3,000,000	\$2,500,000
Total federal estate tax	\$930,000	\$680,000

A conservation easement can also qualify for an additional exclusion of land value up to the lesser of 40% of the remaining value of the land or \$500,000.

With the additional exclusion:

Exclude 40% of easement land value \$700,000	(\$280,000)
Leaves total taxable estate	\$2,220,000
Total Federal Estate Taxes – With Exclusion	\$542,800
Tax Savings	\$387,200

The Economic and Tax Relief Reconciliation Act of 2001 changed the estate tax system. It will gradually phase out and then repeal the estate tax in 2010. However, Congress must reenact the Act by 2010 for the repeal to continue. If not enacted, the estate tax system reverts to the rates in effect before the Act was originally signed. Under the current Act the Estate Tax exclusion amounts go from \$1 million in 2003 to \$3.5 million in 2009 and the estate tax would then be repealed in 2010. Currently, in 2011, the estate tax exclusion amount will then revert to the level when the bill was first enacted, being \$675,000.

Property Taxes

Conservation easements may reduce property taxes. However, property taxes on agricultural land in Illinois are reduced because they are based on a property's productivity rather than fair market value. Conservation easements on land not classified as agricultural may reduce property taxes to the extent the value of the land is reduced. But it is important to remember that property taxes are determined by the county tax assessor and also that tax levies may increase even though the appraised value of the land does not change. Questions on property taxes and the impact of a conservation easement should be directed to your tax advisor or the County Assessor's Office.

The examples used in this publication are for illustrative purposes only. The Land Conservancy, a Division of the Southwestern Illinois RC&D Council does not purport to give legal or tax advice about the consequences of a particular conservation easement. The tax implications of your conservation easement will depend upon the value of your gift, your finances, and other factors unique to your situation. The Land Conservancy recommends that you consult with your own attorney, CPA, financial planner, tax advisor, or estate planner to fully understand how current tax law affects your conservation easement.

Other Conservation Options

Land Donation

Outright donation of the land to a land conservancy or governmental unit is another option. An outright donation has several benefits. It releases you from the responsibility of managing the land and can provide substantial income tax deductions and estate tax benefits (while avoiding any capital gains taxes that would result from selling the property). Donating land may be the best conservation strategy for you if you do not wish to pass the land on to heirs; own highly appreciated property; have substantial real estate holdings and wish to reduce estate tax burdens; or would like to be relieved of the responsibility of managing and caring for the land.

Donating land is a very generous act. But especially if the land has appreciated a great deal since you acquired it, it may not be as large a financial sacrifice as one would expect. If you donate your land to charitable organization or government entity, you can usually claim an income tax deduction equal to the land's current fair market value (within limitations allowed by the tax code). If you sell the land, you will incur capital gains tax on the appreciation. Your profit may be further reduced by a realtor's commission and expenses resulting from the time delay in finding a buyer. Donating the land will also remove its value from your estate, reducing future estate taxes. And, of course, you won't have to pay property taxes on it anymore.

Donating a Remainder Interest

You can donate land but continue to live on it by donating a remainder interest in the property and retaining a reserved life estate. In this arrangement, you donate the property during your lifetime, but reserve the right for yourself or any other named persons to continue to live on and use the property during their lifetimes (called a "reserved life trust"). You have donated to the land conservancy a "remainder interest" in the property. When you or those you've specified die or release their life interests, the land conservancy will have full title and control over the property.

By donating a remainder interest, you can continue to enjoy your land and may be eligible for an income tax deduction when the gift is made. The deduction is based on the fair market value of the donated property less the expected value of the reserved life estate. These transactions have the disadvantage of being relatively complex.

Donating Land by Will

If you want to continue to own and control your land during your lifetime, you can transfer the land to a land conservancy or government entity by will at the time of your death. Before writing the gift into your will, you should make sure the chosen recipient is willing and able to receive the gift.

Placing the donation in your will rather than donating the land during your lifetime means that you receive no income tax benefits from your gift and you will continue to be liable for the property taxes. However, removing the value of the property from your estate could significantly reduce the estate taxes.

Bargain Sale

Land trust and government agencies are sometimes willing, though often not able, to buy conservation land. If you need to realize some immediate income from your land, yet would like the property to go to a land trust or government agency, a bargain sale might be the answer. In a bargain sale, you sell the land for less than its fair market value. A bargain sale combines the income producing benefit of a sale with the tax-reducing benefit of a donation. The difference between the land's appraised fair market value and its sale price is considered a charitable donation and may be able to be claimed as an income tax deduction.

Content of a Conservation Easement

Parties – Grantor (landowner) and Grantee (easement holder)

Date of Conveyance

Recitals (“Whereas” clauses)

- Title representation
- Conservation values of property
- Legal descriptions
- Documentation of “pre-easement” conditions of property
- Continuation of existing uses
- Conveyance of rights to protect conservation values to grantee
- Qualifications of grantee to hold easement

Grant (transfer of property interest)

- Consideration: nominal amount or gift language
- Citation of statutory authority
- Duration: perpetual

Provisions

- Purpose
- Rights of Grantee
- Prohibited uses
- Reserved rights
- Conservation practices
- Notice and approval
- Grantee’s remedies
- Access
- Costs, liabilities, taxes, and environmental compliance
- Extinguishment and condemnation
- Assignment
- Subsequent transfers
- Estoppel certificates
- Notices
- Recordation
- General provisions

Step-by-Step Procedure for Conservation Easements

Stage 1: Obtaining Information

- Step 1. Contact The Land Conservancy (TLC) and request information packet on the process, etc.
- Step 2. Visit with TLC representative on site to clarify issues, questions, etc.
- Step 3. Visit with family (including all heirs, if possible), attorney, tax advisor, estate planner, financial advisor, etc. on conservation easement obligations and benefits.
- Step 4. Notify TLC of desire to donate a conservation easement.

Stage 2: Preparing Conservation Easement and Related Items

- Step 5. Obtain concurrence of TLC regarding their willingness to accept an easement.
- Step 6. Obtain qualified appraiser and appraisal report and provide copy to TLC.
- Step 7. Send a letter to TLC indicating intent to voluntarily contribute to the Stewardship Endowment and the method and timing of the donation.
- Step 8. Obtain survey if needed to identify land unit boundaries for the easement.
- Step 9. Obtain title report. Obtain title insurance if needed and/or desired.
- Step 10. Obtain statements relating to probability of surface mining if mineral rights have been previously separated from the ownership of the land and provide to TLC.
- Step 11. Draft conservation easement and applicable restrictions with your attorney and provide a copy to TLC for review by their attorney.
- Step 12. Obtain mortgage or other subordination agreements as needed and provide to TLC.
- Step 13. Obtain concurrence from TLC of easement language and restrictions.

Stage 3: Finalizing Easement, Baseline Inventory, and Monitoring

- Step 14. TLC completes baseline inventory of resources on the easement property.
- Step 15. Sign, notarize, and record the easement and distribute copies to interested parties.
- Step 16. Contribute to the Stewardship Endowment Fund as planned.
- Step 17. Provide to landowner sign(s) to place on property for easement notification.
- Step 18. Landowner obtains signatures from TLC on IRS forms as needed for income taxes.
- Step 19. TLC monitors easement annually and prepares report.



Credits: Excerpts in many sections of this booklet are courtesy of the Texas Parks and Wildlife Department © 2003 and the Flathead Land Trust, Kalispell, MT.



FOR MORE INFORMATION CONTACT:

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Randolph, St. Clair and Washington
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