



DRIFTLESS

AREA LAND CONSERVANCY

What is a Conservation Easement?

A conservation easement is a voluntary, 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 in the Driftless Area typically protect any or all of these values:

- Wildlife habitat and corridors, particularly prairies, savannas, and oak woodlands.
- Working farms & ranches
- Trout streams
- Open space and scenic values
- Public access (not required) and recreation

Land under easement remains private property. You retain ownership, and can continue to live on the land and use it for farming, forestry, recreation, education or other activities that sustain its conservation values. You can sell your property or pass it on to your heirs; the conservation easement transfers with it, protecting the land forever.

Conservation easements offer great flexibility. An easement on property containing rare wildlife habitat might prohibit any development, for example, while one on a farm might allow continued farming and the building of additional agricultural structures. An easement may apply to just a portion of the property, and need not require public access.

As an accredited land trust, Driftless Area Land Conservancy adheres to strict standards of excellence in protecting conservation lands. DALC holds over 50 conservation easements in six Wisconsin counties and we are responsible for enforcing the restrictions that each easement document spells out. We monitor every easement annually and maintain written records of these monitoring visits, which also provide the landowner a chance to keep in touch with the land trust.

Once you create an easement with DALC, we remain your ongoing partner, providing advice, connections to resources, and support, and ensuring that your vision for the land is carried out – even when the property changes ownership.

How does a landowner benefit?

A conservation easement can permanently protect your land's conservation values, agricultural uses, habitat, and other resources. An easement can also provide substantial financial benefits, such as:

- Federal Income Tax Benefits. If you donate your easement to a qualifying land trust like DALC (and meet other requirements) its value can be considered a charitable gift and can provide federal income tax deductions. [keep the one-pager on this]
- Cash Compensation. For certain projects, DALC can apply for funding to pay you for a portion of your conservation easement's fair market value.
- Estate Planning. By limiting future development, conservation easements typically reduce your property's fair market value, which can help with estate planning.
- Partnership. DALC can provide you with current resource management information and access to funding for resource restoration and habitat enhancements.
- Community. DALC works to connect like-minded landowners together to learn from and support each other. Landowners who have donated a conservation easement to DALC become members of our Driftless Forever Club.
- Preserving Working Lands. Conservation easements can provide income and/or substantial tax benefits to retiring farmers who want to keep their land in the family, while also making working lands more affordable for new farmers if the time comes for retiring farmers to sell.
- Preserving a Legacy. Placing a conservation easement on your property is a way to ensure that the land you cherish will always be protected!

DISCLAIMERS

- Due to the financial and legal impacts of this process, DALC does not render legal or tax advice. It is highly recommended that landowners consult with their legal, financial and estate planners early in the Conservation Easement process.
- Landowners are responsible for compliance with IRS IRC 170, IRS Notice 2004-41, accompanying Treasury Department regulations and other Federal and State laws and Rules
- DALC does not knowingly participate in projects where DALC has significant concerns about the tax credits/deduction. Additionally, DALC makes no guarantee as to the qualifications or value of the Conservation Easement for tax purposes.

How is a conservation easement established?

Our experienced staff can guide you through the process, which typically takes 6-18 months to complete, and includes discussing your vision and goals, visiting the property to help you develop a plan that will protect the values most important to you and your family, and researching potential funding sources.

Conservation Easement Process

- **Phase 1 – Initial inquiry**
 - Please contact us if you want to explore if an easement is right for you! A DALC staff member will provide an overview of the process and set up a visit which can occur at the property or any convenient location.
 - DALC staff meet with you to discuss your wishes, needs and conservation objectives. DALC describes our organization and policies and explains how a conservation easement works. We also consider if an easement is appropriate for your property, and any other conservation options that may be available to you.
 - You review materials, consult with family members, legal counsel, and/or tax advisors, and then let us know if you'd like to further explore an easement. DALC will also review your property details and goals to assess alignment with DALC's mission and conservation priorities.

- If both you and DALC decide we would like to proceed, DALC staff prepare an evaluation packet to be presented to the Land Conservation Committee of DALC's Board of Directors for approval to negotiate a conservation easement.
- **Phase 2 –Due Diligence & Writing the Conservation Easement**
 - DALC staff and landowner agree on a contribution to the Stewardship and Legal Defense Fund, and a related payment structure.
 - DALC staff visit the property to further evaluate its features and the natural and open-space resources while continuing to consult with the owner on the likely easement terms and long-term objectives. DALC staff determine whether protection of the property serves the public interest and, (if donated), which of the various IRS public benefit tests are most likely satisfied.
 - DALC staff and DALC's attorney complete a title review and work through any exceptions. There may be additional steps, such as a mortgage subordination, required depending on the complexity of the project.
 - While due diligence is underway, DALC staff prepare a draft conservation easement for the landowner's review. It is important that the landowner and DALC agree on which activities will be restricted to protect the property's conservation values.
- **Phase 3 – Finishing the Conservation Easement**
 - Once the landowner and DALC agree on the terms of the easement, the landowner typically has the easement reviewed by their own legal counsel.
 - When a final draft of the easement has been agreed upon, DALC staff prepare a baseline documentation report (BDR) of the property. A BDR consists of reports, maps, photographs, and other documentation that both parties agree provides an accurate representation of the condition of the property at the time of conveyance of the easement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of the easement.
- **Phase 4 – Closing the Conservation Easement.**
 - Landowner and DALC staff gather to close the conservation easement. This typically takes place at a title company's or attorney's office but it can also be done remotely and in counterparts.
 - The signed easement document is recorded at the county courthouse.
 - Photos and gratitude!
- **Phase 5 – if applicable, Landowner makes arrangements to claim charitable contribution**
 - If the landowner intends to take a qualified tax deduction or claim a credit for the non-cash charitable gift, the landowner is responsible for hiring an independent appraiser to determine the value of the gift. The appraisal must be completed before the landowner files their tax return for the year in which the gift is made, and not more than sixty days prior to the date of the gift.
 - The landowner claims a federal income tax deduction for the donation on a special form with his or her income tax return (Form 8283). Depending on the state, there may be state and local tax savings as well.
- **Phase 6. Stewardship**

- DALC's work does not stop with the recorded Conservation Easement in place. In order to ensure that your Conservation Easement is accomplishing its goals, DALC will visit with you and the property at least annually.
- DALC will also be a resource to answer any questions that you or a future owner may have.
- If an activity occurs that degrades the conservation values of the property in violation of the easement, DALC will negotiate with the responsible party to solve the problem. If necessary, DALC will enforce the conservation easement in a court of law.

More detailed information on CE costs, and the federal income tax benefit follow...

How much does a conservation easement cost?

While every conservation easement is unique, one thing is certain – there is significant work required to:

create a conservation easement, and to

maintain and defend a conservation easement.

This work translates both into time and out-of-pocket costs for the landowner and the land trust. A conservation easement is meant to last forever; the cost to create an easement can be considered an investment that pays dividends for all of time.

CREATING a conservation easement

Out-of-pocket costs to create a conservation easement can range from \$15,000 – 20,000 or more, with significant investment of a landowner's time over the course of 6-18 months. The land trust incurs fewer out of pocket costs initially, but commits significant technical resources to ensure the easement is legally defensible over time, and commits to monitoring and defending the easement forever.

Described below are typical costs of conservation easements:

Planning the conservation easement -- this process includes identifying the conservation objectives of the easement, articulating restrictions necessary to protect the conservation objectives, preparing and reviewing the easement document, and all the real estate transactions leading up to the closing. This process can take 6-18 months and is a significant investment of time by both DALC and the landowner.

Legal expenses for both DALC and the landowner -- A conservation easement is a legal document that dictates the use of your land forever and states how communication, violations, and legal action shall be handled. It is important that you understand and agree fully with the language. Advice of attorneys looking out for each parties' interests is a wise investment.

Financial advisor consultation for the landowner -- Donating an easement can reduce your income taxes and estate taxes at local, state, and federal levels. We recommend consulting with a tax attorney, accountant, or other financial advisor about your financial resources, expected tax burden, estate plans, and easement-related expenses and tax benefits.

Mortgage Lease/Subordination -- Any mortgages or active mineral leases must be subordinated (placed second to the conservation easement so that the easement cannot be overruled by another party). Subordination is an IRS requirement. This may take some of the landowner's time, but typically does not require any out of pocket cost unless your mortgage holder requires an appraisal of the easement to understand its impact on the value of their collateral.

Appraisal and land survey ordered by the landowner --

- A certified appraisal is required if you wish to take advantage of any tax benefits – the appraisal documents the monetary value of the easement. DALC maintains a list of qualified appraisers but IRS rules require a landowner to hire his or her own appraiser. A conservation easement appraisal can cost anywhere from \$3,000 to \$6,000 dollars.
- A land survey provides a legal description of the easement boundaries, and any special zones articulated in the easement. If a legal description already exists (for example the boundary of the easement follows the boundary described in the property title) a survey is typically not necessary. Survey costs vary widely, anywhere from \$2,000 to more than \$10,000, depending on the complexity of the property boundary and conditions of the easement.

Title search and recording fees are typically paid for by DALC—

A title report is required for all conservation easements. It provides a legal property description and reveals liens, mortgages, leases and rights-of-way, so we're aware of (and can correct) anything that could override the easement. DALC prefers to also purchase a title insurance policy at closing and in order for a policy to be issued, the landowner will typically need to sign an affidavit affirming there are no property liens or other encumbrances other than those which have been previously identified. The recording fee is the fee the county charges to record the easement.

MAINTAINING and DEFENDING conservation easements

With the recording of the easement document, DALC's work has only just begun—and will never end. DALC is now responsible for ensuring that all future owners respect the conservation objectives of the easement. Responsibilities include:

- Annual visits to monitor the condition of the land;
- Responding to owners' questions regarding the conservation of the land and the easement;
- Building relationships with new owners when the land changes hands;
- Ensuring that the conservation objectives are upheld, including, if necessary, going to court to prevent, stop, or resolve a violation of the easement's terms (an action that becomes far more likely when the land passes to new owners); and
- Responding to owners' requests to engage in activities that require land trust approval.

To provide a perpetual investment to cover actual and potential costs in the future, DALC maintains a Stewardship and Legal Defense Fund and requests landowners make a tax-deductible donation. All contributions are pooled and diversely invested for use in stewardship of easements we hold. These funds are not used for general operations, but only to cover direct expenses associated with easement protection.

DALC requests a \$15,000 tax deductible donation for every conservation easement project. We also ask that the first \$2000 be paid when we've mutually agreed to start work on your project, because that's when we begin to incur substantial costs for due diligence and staff time.

We manage these funds as an endowment, so that the fund generates income to cover the costs of stewarding the easement on a perpetual basis. This gift can be made in a lump sum or through a longer term funding arrangement specific to a landowner's situation.

A Permanent Tax Incentive to Help You Conserve Your Land

In 2015, Congress made permanent an incentive that enhances the tax benefits of protecting your land by donating a voluntary conservation easement. If you own land with important natural or historic resources, donating a voluntary conservation easement can be one of the smartest ways to conserve the land you love, while maintaining your private property rights and possibly realizing significant federal tax benefits.

This tax incentive makes it easier for average Americans, including working family farmers and ranchers, to donate the development rights on their land by:

- Allowing you to deduct up to **50%** of your adjusted gross income (AGI) for donating a voluntary conservation easement; or
- Allowing you to deduct up to **100%** of your AGI if you qualify as a farmer or rancher; and
- Allowing you to "carry forward" the unused amount of your deduction and apply it to your income for up to **15 years** into the future.

For example, a landowner earning \$50,000 a year who donated a \$1 million conservation easement could deduct \$25,000 for the year of the donation and then for an additional 15 years. That's \$400,000 in deductions. If the landowner qualifies as a farmer or rancher, they can zero out their taxes. In that case, they could take a maximum of \$800,000 in deductions for their million dollar gift.

To qualify as a charitable donation, a conservation easement must be permanent and meet specific requirements set by the IRS. A landowner should get professional financial planning and legal advice before making such a major donation.