



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. It allows you to continue to own and use your land and to sell it or pass it on to heirs.

When you donate a conservation easement to a land trust, you give up some of the rights associated with the land. For example, you might give up the right to build additional structures, while retaining the right to grow crops. Future owners also will be bound by the easement's terms. The land trust is responsible for making sure the easement's terms are followed on a long-term basis.

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.

A landowner sometimes sells a conservation easement, but usually easements are donated. If the donation benefits the public by permanently protecting important conservation resources and meets other federal tax code requirements it can qualify as a tax-deductible charitable donation. The amount of the donation is the difference between the land's value with the easement and its value without the easement. Placing an easement on your property may or may not result in property tax savings.

Perhaps most important, a conservation easement can be essential for passing land on to the next generation. By removing the land's development potential, the easement lowers its market value, which in turn lowers estate tax. Whether the easement is donated during life or by will, it can make a critical difference in the heirs' ability to keep the land intact.

Why should I grant a conservation easement to a land trust?

People execute a conservation easement because they love their open space land, and want to protect their land from inappropriate development while keeping their private ownership of the property. Granting an easement to a conservation organization that qualifies under the Internal Revenue Code as a "public charity" - which nearly all land trusts do - can yield income tax savings. Moreover, land trusts, some of which are more than 100 years old, have the expertise and experience to work with landowners and ensure that the land will remain as permanent open space.

For more information about protecting your land, contact Jennifer Filipiak at Driftless Area Land Conservancy
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Are conservation easements popular?

They are very popular. As of 2015, the amount of land protected by local and state land trusts using easements was over 16 million acres nationally, with over 200,000 acres in Wisconsin alone. Landowners have found that conservation easements can be flexible tools, and yet provide a permanent guarantee that the land won't ever be developed. Conservation easements are used to protect all types of land, including farmland; historical or cultural landscapes; scenic views; streams and rivers; trails; wetlands; wildlife areas; and working forests.

How can a conservation easement be tailored to my needs and wishes?

An easement restricts development to the degree that is necessary to protect the significant conservation values of that particular property. Sometimes this totally prohibits construction, and sometimes it doesn't. Landowners and land trusts, working together, can write conservation easements that reflect both the landowner's desires and the need to protect conservation values. Even the most restrictive easements typically permit landowners to continue such traditional uses of the land as farming and ranching.

What steps do I take to write a conservation easement?

First, contact a land trust in your community to become acquainted with the organization and the services they can provide. Explore with them the conservation values you want to protect on the land. Discuss with the land trust what you want to accomplish, and what development rights you may want to retain. For example, you may already have one home on your property and want to preserve the right to build another home. That is one provision that must be specifically written into an easement agreement. Always consult with other family members regarding an easement, and remember that you should consult with your own attorney or financial advisor regarding such a substantial decision.

How long does a conservation easement last?

Most easements "run with the land," binding the original owner and all subsequent owners to the easement's restrictions. Only gifts of perpetual easements can qualify for income and estate tax benefits. The easement is recorded at the county or town records office so that all future owners and lenders will learn about the restrictions when they obtain title reports.

What are a land trust's responsibilities regarding conservation easements?

The land trust is responsible for enforcing the restrictions that the easement document spells out. Therefore, the land trust monitors the property on a regular basis -- typically once a year - to determine that the property remains in the condition prescribed by the easement document. The land trust maintains written records of these monitoring visits, which also provide the landowner a chance to keep in touch with the land trust. Many land trusts establish endowments to provide for long-term stewardship of the easements they hold.



A Permanent Tax Incentive to Help You Conserve Your Land

In 2012, Congress made permanent an incentive that enhances the tax benefits of protecting your land by donating a voluntary conservation agreement. If you own land with important natural or historic resources, donating a voluntary conservation agreement 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. These new incentives make it easier for average Americans, including working family farmers and ranchers, to donate the development rights on their land. The incentive:

- Raises the maximum deduction you can take for donating a voluntary conservation to **50%** of your adjusted gross income (AGI)
- Allows you to deduct up to **100%** of your AGI if you qualify as a farmer or rancher; and
- Increases the number of years over which you can take deductions to **15 years**.

These changes allow many modest income landowners to deduct much more than they could under the old rules, bringing increased fairness to the tax code.

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.

What do you need to know to enter into a voluntary conservation agreement? Here are the facts:

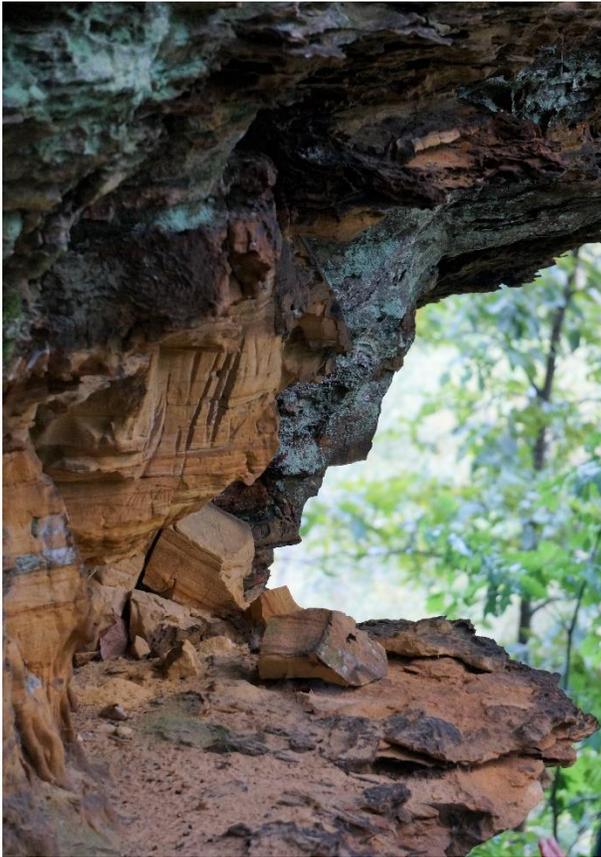
- A voluntary conservation agreement, also known as a conservation easement, is a legal agreement between a landowner and a nonprofit land trust or government agency that permanently limits uses of the land in order to protect important conservation values. It allows you to continue to own and use your land and to sell it or pass it on to heirs.

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- When you enter into a voluntary conservation agreement with a land trust, you give up some of the rights associated with the land. For example, you might give up the right to subdivide your land or build additional houses, while retaining the full right to grow crops. Future owners also will be bound by the agreement's terms. The land trust is responsible for making sure the terms of the agreement are followed.
- Voluntary conservation agreements vary widely. For example, an agreement to protect rare wildlife habitat might prohibit any development there, while one to protect the scenic and historic values of a farm might allow continued farming and the building of additional agricultural structures. An agreement may apply to just a portion of the property, and need not require public access.
- A conservation donation requires not only a willing donor, but a qualified conservation organization to accept the donation. That organization needs to be able to show that the donation closely fits its particular charitable mission. A land trust will not accept a donation that does not fit its mission and purposes.
- A voluntary conservation agreement can help a landowner pass land on intact to the next generation. By limiting the land's development potential, the agreement lowers its market value, which in turn lowers estate tax. Whether the agreement is donated during life or by will, it can make a critical difference in the heirs' ability to keep the land intact.
- If a conservation agreement benefits the public by permanently protecting important conservation resources and meets other federal tax code requirements, it can qualify as a tax-deductible charitable donation. The amount of the donation is the difference between the land's appraised value with the agreement and its value without the agreement.
- To qualify as a charitable donation, a conservation agreement must be permanent and meet other specific requirements. A landowner should get professional financial planning and legal advice before making such a major donation.



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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 \$10,000 – 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 of our separate 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.

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 that landowner to hire his or her own appraiser. A land appraisal can cost anywhere from \$1,000 to several thousand 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. The recording fee is the fee the county charges to record the deed.

MAINTAINING and DEFENDING conservation easements

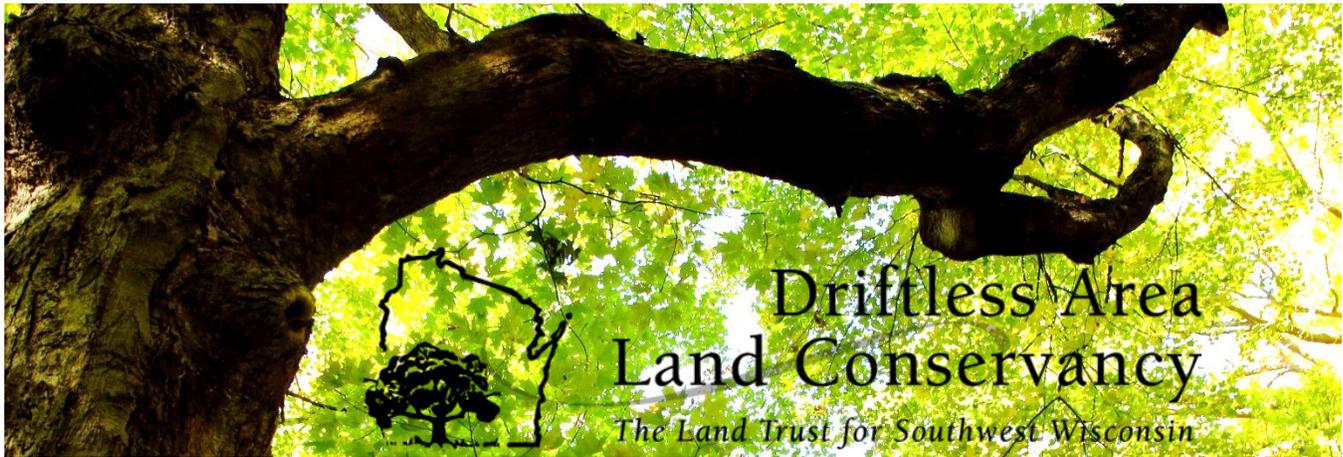
With the recording of the easement document, DALC's work has only just begun—and will never end. DALC is now responsible for ensuring that all future owners respect the conservation objectives of the easement. Responsibilities include:

- 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 an easement stewardship fund and requests landowners make a tax-deductible donation at the time the easement is signed. 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 \$10,000 tax deductible donation for every conservation easement. We manage these funds as an endowment, so that the funds generates income to cover the costs of stewarding the easement on a perpetual basis. This can be made in a lump sum at the close of the easement, or through a longer term funding arrangement specific to a landowner's situation.

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Steps to Donate an Easement

The following are the basic steps in donating a conservation easement.

1. Landowner and land trust representative(s) meet to discuss landowner's wishes, needs and conservation objectives. The land trust representative describes the land trust and its policies, and explains how a conservation easement works, appropriateness for the property, and any other conservation options that may be available to the landowner.
2. Landowner reviews the material, consults with family members, legal counsel, and/or tax advisors, and indicates an interest in further exploration of an easement.
3. A land trust representative visits the property to evaluate its features and the natural and open-space resources, and consults again with the owner on the easement terms and the long-term objectives. The land trust representative determines whether protection of the property serves the public interest and, (if donated), which of the various IRS public benefit tests is satisfied. The land trust conducts a baseline study to inventory and document the resource values of the property.
4. After consulting with family members, advisors, or others, the landowner reaches a preliminary agreement with the land trust on the proposed terms of the easement and property description.
5. The land trust board approves the conservation easement, making a finding as to the public benefit of the easement and how it fits with the land trust's strategic plan.
6. Landowner provides chain of title, certification of title or title report to the land trust.
7. The landowner contacts the lender, if any, to arrange for subordination of mortgage. The mortgage must be subordinated for the conservation easement to be effective and (if donated) for a tax deduction to be available.
8. Landowner determines if certain IRS requirements for an easement to be tax deductible are met.
9. Conservation easement is finalized and signed.

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10. The signed easement documents, usually including the Baseline Report, are recorded at the county courthouse.
11. Most land trusts ask conservation easement donors to make a donation to the land trust to cover the costs of monitoring and enforcing the conservation easement in perpetuity.
12. 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.
13. 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.
14. The land trust has the responsibility of monitoring the property once or twice per year to ensure that all of the easement conditions are met.



- Sound Finances
- Ethical Conduct
- Responsible Governance
- Lasting Stewardship

As an accredited land trust, Driftless Area Land Conservancy adheres to strict standards of excellence in protecting conservation lands. You can find much more information about protecting your land by visiting the Land Trust Alliance's website: <https://www.landtrustalliance.org/what-you-can-do/conserv-your-land/getting-started>

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