



Conservation Easements

A conservation tool for landowners who want to protect the natural features of their property and retain private ownership.



A conservation easement made it possible for the Reed Family to protect nearly 200 acres in Mason County. Photo: Todd Reed

What is a Conservation Easement?

For landowners who want to conserve their land and yet keep it in private ownership and use, a conservation easement may be the best solution. A conservation easement is a legal agreement between a landowner and the Land Conservancy that limits a property's uses and development in order to conserve its natural, agricultural, or scenic values.

This voluntary agreement between a landowner and the Land Conservancy is permanent and applies to all future owners, whether they inherit or purchase the property. The land stays in private ownership and the conservation easement simply gives the Land Conservancy the right to ensure that the natural characteristics of the land are protected.

Land preserved with a conservation easement benefits the public by conserving natural habitats and scenic views. To encourage the donation of these easements, federal and state tax incentives were created for qualified conservation easement donations.

Creating a conservation easement does not mean that the land is opened up to the public. Most easement donors want to maintain their privacy and therefore do not allow

public access to their property. If the easement donor or a future landowner wants to permit full or limited access by the public, they may do so, but it is not required.

Conserving Land by Limiting Uses

Conservation easements preserve natural and agricultural land by limiting future uses that could destroy or degrade these resources. Each conservation easement is written to reflect the unique characteristics of a property and the resources that are to be protected, as well as the landowner's current uses and goals for the property.

Most conservation easements limit future residential development and land division because both have a significant impact on natural habitats. Other development activities that would significantly alter the landscape and habitats, such as road building and mining, are also limited. Frequently, conservation easements include a residential area that is largely free of restrictions and allow farming and habitat management activities to continue.

The Land Conservancy does not restrict hunting with a conservation easement, but the number of blinds and bait piles may be limited. Conservation easements may be designed to cover all or only a portion of a property.

Is a Conservation Easement Right for Your Land?

Please contact the Land Conservancy of West Michigan's land protection staff at 616-451-9476 or email lcwm@naturenearby.org and we will help you determine the best conservation option for your land.

Protecting Private Property Rights

Some landowners are concerned that if they create a conservation easement they are turning over all their rights to manage and use the property to the Land Conservancy. This is not true. In fact, all that is transferred to the Land Conservancy is the right to enforce the restrictions stated in the conservation easement.

The Land Conservancy annually monitors the property to make sure that the terms of the easement are being followed, but it has no other management responsibilities and exercises no direct control over unrestricted activities on the land.

Similarly, the Land Conservancy has only a limited right to enter the property – to meet the monitoring requirements and to prevent a violation of the easement's terms. It is the Land Conservancy's policy to make every effort to get permission from the landowner before entering the property.



Jeff and Anya Byam (pictured above) created a conservation easement to protect their 30 acres in Muskegon County. "It is very fulfilling and reassuring to know that this piece of land will be there for people to enjoy and wildlife to survive on for generations to come," explains Jeff.

A Long-Term Commitment to Conservation

The conservation easements held by the Land Conservancy are "perpetual" – they last forever. If the Land Conservancy discovers a problem and believes the terms of the easement are not being followed, the Land Conservancy will take whatever steps are necessary to uphold the terms of the easement.

Although the Land Conservancy has a right to take legal action against violators, it is our policy to make every effort to first work cooperatively with the landowner to fully understand the nature of the problem, to stop any further destruction of the protected resources, to have damaged resources restored, and to ensure that the problem doesn't continue in the future.

Property that Qualifies for a Conservation Easement

To qualify for federal and state tax incentives a conservation easement donation must be voluntarily created by the landowner, it must be given to a qualified charitable organization such as the Land Conservancy of West Michigan, and the easement must be of significant conservation value as defined by the federal government. Easements that meet this "conservation purposes" test will do one or more of the following:

- protect natural habitat for wildlife,
- preserve open space that contributes to the goals of a government program,
- preserve recognized scenic views for the public,
- preserve important farmland or forestland,
- or preserve public land for outdoor recreation and education.

If other parties hold a legal interest in the property that would affect the permanence of the easement or the resources that are being protected, such as mortgages and surface mineral rights, these interests must be subordinated to the conservation easement. Finally, the conservation easement must be perpetual, or permanent.

The Land Conservancy prefers conservation easements that preserve at least 10 acres in urban areas and 30 acres in rural areas. Smaller parcels may be considered if they are adjacent to other conserved lands, if they contribute to one of the Land Conservancy's priority protection goals, or if they have significant ecological features.

Currently, the Land Conservancy places a priority on preserving natural habitats with relatively little man-made disturbance – properties that help us meet our goal of "keeping nature nearby". At the invitation of the landowner, Land Conservancy staff will evaluate a property to determine whether it meets the Land Conservancy's criteria.



Making “Cents” of Conservation Easements

Financial Benefits of Creating a Conservation Easement

There has never been a better time to donate a conservation easement. In 2006 there were significant changes in both the federal and state tax incentives for conservation easement donations. These changes allow many modest-income landowners to benefit much more from the donation of a conservation easement. **These expanded federal tax benefits were renewed for another two years (for 2008 and 2009) as part of the 2008 Farm Bill.**

Federal Income Tax Benefits

The expanded federal law did three key things for conservation easement donors:

- First, it raised the maximum annual deduction for an easement donation to 50% of a landowner's adjusted gross income instead of the 30% maximum allowed previously.
- Second, the number of years that a donor can “carry forward” any unused portion of the donation increased to 15 successive years, instead of the 5 additional years allowed previously.
- Third, it allowed qualified farmers, ranchers, or forest landowners who derive a majority of their income from these sources to deduct the value of the conservation easement against 100% of their income.

These expanded tax benefits apply to all qualified conservation easements that are donated in 2008 and 2009. Land conservation groups will undoubtedly be seeking legislation to make these increased benefits permanent.



The protection of important wildlife habitat is just one of the many benefits of creating a conservation easement. *Photo: Jim Reminga.*

Determining the Value of a Conservation Easement for Federal Tax Purposes

An independent appraisal done to IRS standards determines the value of a conservation easement for a donor's tax deduction purposes. The Land Conservancy can provide a list of appraisers in the area that meet IRS qualifications and who have experience in easement appraisals. We can also provide necessary information to other qualified appraisers who haven't previously worked on an easement.

To value a conservation easement, the appraiser must first determine the “before” value of the property – its unrestricted fair market value. Then the appraiser will determine the “after” value of the easement property – how its value is affected by the restrictions imposed by the conservation easement agreement. The difference between these two values is the value of the conservation easement. (See example on last page.)

If valuable development rights are restricted, such as upland residential sites in desirable areas with good access to roads and utilities, the donation value of a conservation easement may be much greater than if the conservation easement only places limits on land that is not easily developed, such as wetlands and steep dunes.

Reed Family Conservation Easement

For many years the Reed family has carefully managed their hunting property on the Pere Marquette River to improve the quality of the wildlife habitat. In addition to hunting the property, they value the land as a place for family gatherings, where kids can learn through outdoor adventures, and where the talented photographers in their family can practice their art.

When they learned about conservation easements they could see that it was a way to ensure that their land would never be turned into a riverside subdivision and that it would make it much easier for their heirs to keep the land in the family.

The Reed's conservation easement allows them to continue wildlife habitat enhancement projects, to lease agricultural fields to neighbors, and to allow future generations to place another cottage along the mile-long stretch of river that they own. The majority of the property will remain free of development, helping to preserve the natural Pere Marquette River corridor and home to a great diversity of wildlife.



Making “Cents” of Conservation Easements

State Property Tax Benefits

Unlike the federal law, Michigan’s new tax incentive for conservation easements is not temporary. Michigan Public Act 446, passed in December 2006, caps property tax reassessments for land restricted by a qualified conservation easement. Under current law, the taxable value of a property may not increase from one year to the next by more than 5% or the increase in the consumer price index, whichever is lower, until there is a transfer of ownership.

This means that the assessed value of land that has been held for several years by an owner is often far less than its fair market value. When the land passes to heirs or is sold it is reassessed and taxes can increase substantially. This “pop-up tax” can be a huge burden on families who want to keep natural and agricultural land in the family without being forced to sell or develop some of it to pay the taxes.

The new state bill eliminates the pop-up tax on conservation easement land so that when the land passes to heirs or is sold to a new owner the property’s assessed value will continue to increase only at the rate of inflation, and at no more than 5% annually. This new cap applies only to the land – any buildings on the property remain subject to the pop-up tax when ownership is transferred.

Unfortunately, creating a conservation easement in Michigan does not necessarily mean that property taxes will be reduced even though an independent appraisal may demonstrate a reduction in the property’s value. Assessors were directed by the Tax Tribunal and the

Department of Treasury to “consider” the reduction in a property’s value caused by a conservation easement when establishing its assessed value, but they are not required to lower property taxes. The owner of the property will have to apply to his or her local township in order to request a reduction in property taxes.

Estate Tax Benefits and Donating an Easement through a Will



Conservation easements may reduce a landowner’s estate tax if the donation of the easement reduces the value of the property. It is possible for a landowner to donate an easement through a will, or the heirs may create an easement after a landowner’s death. The value of the easement may then be deducted from the taxable estate.

The Taxpayer Relief Act of 1997 greatly increased the estate tax benefits of a conservation easement. The law allows the exclusion for estate tax considerations of 40% of the value of land subject to a conservation easement, up to \$500,000 per estate. This exclusion is in addition to the appraised value of the conservation easement.

It is always a good idea to contact the Land Conservancy prior to donating a conservation easement through a will. This will ensure that the Land Conservancy can accept the proposed conservation easement and that it will be possible to achieve the landowner’s goals.

Please Consult Your Financial Advisor! If you are considering donating a conservation easement you should be aware that your actual tax savings would be a function of your income tax bracket and whether or not you have other charitable deductions. *To determine how a conservation easement donation would affect your taxes you need to consult your own professional tax and/or legal advisor. The Land Conservancy does not claim to give legal or tax advice about the consequences of a particular conservation easement donation.*



Making “Cents” of Conservation Easements

Costs to Create a Conservation Easement

Appraisals: A landowner seeking a federal income tax deduction for the donation of a conservation easement will be required to provide a qualified appraisal if the value of the deduction is greater than \$5,000. The IRS requires a specific kind of appraisal that uses a “before and after” evaluation method and a full discussion of all comparables and adjustments. At this time, we are seeing prices for this kind of appraisal ranging between \$3,500 and \$10,000, depending on the size and complexity of the easement and the property. Some of this cost may be deductible as a tax planning expense.

Title Work: The Land Conservancy requires a review of the property’s title for all conservation easement properties. Title work generally costs about \$150. In rare cases, more costly title insurance may be necessary.

Survey: The Land Conservancy requires that the boundaries of a conservation easement property can be located by representatives of the Land Conservancy responsible for easement monitoring. A survey isn’t required if the boundaries are readily found.

Tax and Legal Advice: The Land Conservancy of West Michigan cannot represent the landowner’s interests in legal or tax matters. We strongly encourage landowners to get professional advice in these areas.

Conservation Easement Stewardship Fund: In accepting a conservation easement, the Land Conservancy makes a commitment to do whatever is necessary to uphold the terms of the easement. To ensure that the organization can fulfill its responsibility to legally defend a conservation easement or to repair the damage caused by a violation, the Conservancy created the Easement Stewardship Fund.

All easement donors are asked to consider making a financial contribution to the Conservancy’s Easement Stewardship Fund. The Land Conservancy uses an easement endowment “calculator” or worksheet to help determine how much it will cost the organization to hold the conservation easement, over time. The property’s size, location, and the number of reserved rights in the conservation easement factor into the recommended endowment contribution.



Most landowners see that their conservation goals are more likely to be sustained if they can contribute to the easement’s future protection. Contributions to the Fund can be made through a one-time donation, over a number of years, or through a will or estate.

Although there are costs associated with the creation of conservation easements, there are many potential financial benefits as well. Photos (left & above): Jim Reminga



The Nuts and Berries of How Conservation Easements Work

A Conservation Easement Example: The Smiths own and live on a 90-acre property. They have a house and outbuildings, but most of the property is natural and undeveloped, with fields, woods, and wetlands. Without a conservation easement their property would likely become a residential subdivision.

Using the “before and after” method for evaluating a conservation easement, an appraiser determines that the fair market value of their property, unrestricted, is \$650,000.

The Smith’s conservation easement will prohibit further land division and home construction. An appraiser determines that removing this development potential reduces the value of the property to \$330,000. Therefore, the value of their conservation easement is \$320,000:

Unrestricted property:	<u>\$650,000</u>
Property restricted with easement:	<u>\$330,000</u>
Value of Conservation Easement:	<u>\$320,000</u>



The Smiths donate the conservation easement to the Land Conservancy of West Michigan (a qualified nonprofit) and deduct the value of the gift the year the gift is made, up to 50% of their adjusted gross income. Any amount of the charitable donation remaining after the first year can be carried forward and deducted against income (within the 50% limit) for 15 additional years.

In this example, assume that the Smiths’ adjusted gross income is \$80,000 and it remains constant. If they donate a conservation easement valued at \$320,000 to the Land Conservancy and they claim no other charitable deductions, they can deduct \$40,000 from their income tax the year the gift is made (50% of \$80,000) and do the same for the 7 following years until they’ve used all of the donated easement’s value (\$40,000 x 8 = \$320,000).

The actual tax savings the Smith’s would realize as a result of their easement gift is a function of their income tax bracket. In this example, if the Smiths were in the 28% tax bracket the year their gift was made, the conservation easement tax deduction would allow them to apply their tax rate to a \$40,000 AGI instead of an \$80,000 AGI, resulting in an actual tax savings of \$11,200 that first year.

<u>Calculations:</u>	<u>Old Benefits</u>	<u>Expanded Benefits</u>
Adjusted Gross Income (AGI)	\$80,000	\$80,000
Value of Conservation Easement	\$320,000	\$320,000
Annual limit on Charitable Contribution	\$24,000	\$40,000
Contribution Deduction Year 1-6	\$24,000	\$40,000
Contribution Deduction Year 7-8	NA	\$40,000
Contribution Deduction Year 9-16	NA	-0-
Total Deduction	\$144,000	\$320,000
Actual Tax Savings (28% tax bracket)	\$40,320	\$89,600
Additional Tax Savings Under New Law = \$49,280		