

Commonly asked Questions about Conservation Easements

By Pam Foster Felt, Outreach Director for Gathering Waters Conservancy

“I’m going to put my land in conservancy.”

You may have heard a similar announcement from a neighbor or family member. Given the remarkable growth in Wisconsin’s land trust movement, it wouldn’t be surprising. But what exactly does that mean?

Probably, it means that landowner has voluntarily agreed to some kind of land transaction—a sale or donation of property to a non-profit conservation organization or public agency that promises to protect it. A family owning land surrounding an undeveloped lake might sell it to the Door County Land Trust, for example. Or that family might *give* the property to the county parks system in their lifetime or in their will. When a landowner wants to continue to own and live on his land, or the recipient *doesn’t* want to own it, but both parties do want it permanently protected, the landowner might sell or donate a conservation easement (more on those soon).

What’s a land trust?

A “Land trust,” – is not, despite the name, a financial entity – it is a generic term for any nonprofit conservation organization that owns land or holds conservation easements or does both. There are 50 land trusts working to protect Wisconsin’s special places.¹

How do they work?

The land trust community is diverse. All land trusts are in the conservation business, but the ways they conduct that business vary by organization and by property. Most of them work with private landowners to protect natural lands. Many also partner with municipalities, the DNR and federal agencies. The majority of Wisconsin’s land trusts hold conservation easements.

What is a conservation easement?

A conservation easement is a permanent legal agreement between a landowner and an easement “holder” that limits specified rights – the right to sell off house lots, perhaps – for conservation ends. For example, a landowner might donate to the Northwoods Land Trust a conservation easement on several forested acres and lakeshore that limits any building that might adversely affect the health of the forest or disturb the shoreline. The land trust doesn’t own those building rights: it cannot sell them. It “owns” only the responsibility to make sure those rights are never exercised and remedy any damage to the land if they are.

The landowner’s job is to enjoy the land in ways that honor the easement. The land can be sold or inherited, and future landowners are bound to the easement’s terms. The land trust’s job is to ensure that the easement is upheld, including, if necessary, legally defending it.

¹ To find a land trust near you, visit the land trust directory at www.gatheringwaters.org

Who would voluntarily relinquish some property rights? What kind of non-profit wants perpetual responsibility for real estate it doesn't own? What's in this deal for either party?

The answer is simple: permanent conservation. For people passionate about land conservation, the restrictions and responsibilities of conservation easements are worth the assurance that their grandchildren will have the chance to know those woods and that lakeshore.

What do conservation easements limit?

That answer varies easement to easement. The restrictions in each easement are necessarily tied to the place it is designed to protect. Easements to keep land available for agriculture tend to allow many more land uses than easements protecting sensitive wildlife habitat, for example. Although it is common for conservation easements to limit development, there is no set standard.

What are conservation easements worth?

Because conservation easements are real property interests, they can be appraised. Many landowners considering a conservation easement, understandably, want to know what it will be worth. Unfortunately, it is impossible to ballpark easement value without knowing precisely what the easement will say. An easement prohibiting development of a marsh is not likely to change the market value of the land. But an agreement never to subdivide 60 acres of lakefront is likely an agreement to forego significant property value: the appraised value of such an easement would likely be substantial.

What about tax incentives?

Land trusts and governments that hold easements are rarely flush with cash to buy them, and not all land owners need the income or want the capital gains. Fortunately, the federal government offers some tax benefits for conservation donations. This article is no place for Internal Revenue Code details, but very generally, the tax incentives work like this:

Donated conservation easements are non-cash charitable contributions (you can give a piano to your church: you can give a conservation easement to your land trust). A taxpayer donating an easement that meets the IRS's definition of a "conservation contribution" is allowed to deduct the easement's value up to a percentage of his income. The federal estate tax system also favors conservation easements.

So, in the best case scenario, that family donating the easement to the Northwoods Land Trust could enjoy an income tax break and the assurance that their land will remain protected no matter who inherits or buys it. When they pass away, the land will be devalued for estate tax purposes. Neighbors, visitors and the natural systems that thrive on the property enjoy it forever.

Now, who wouldn't want that?

Is a conservation easement for you?

Conservation easements have been advantageous for many landowners and thousands of acres. But an easement is not the best tool all the time. Anyone thinking of a conservation easement should consider a few things:

Conservation easements are permanent. Legally they are very difficult to amend or extinguish.

They are not land management tools. A dedicated forester might hope a conservation easement will ensure that all subsequent landowners follow his forest management vision. But science changes and few land trusts would welcome the burden of forcing the next landowner to mow, cut, or manage in a certain way.

They will not necessarily lower property taxes. Wisconsin laws do not guarantee property tax reductions for permanently protected land, and assessment of eased land has varied across the state.²

Conservation easements are not universally available. There are not yet land trusts working in all corners of Wisconsin. Where there is an active land trust, its mission and resources may not match a landowner's hopes for her property.

Finally, easements are not free rides to tax windfalls. Easement negotiations rarely happen quickly. Appraisals and attorneys are expensive. Land trusts frequently request contributions to support their monitoring and legal defense costs. Conservation easements can cost a lot of money and time to give away.

Even so, many Wisconsin families have voluntarily and forever protected their land using conservation easements.

Where would one start?

Introduce yourself to your local land trust: learn how your goals for your own property may dovetail with the land trust's mission. To find a local land trust and learn more, visit Gathering Waters Conservancy's website www.gatheringwaters.org

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² Visit www.gatheringwaters.org to download a report about assessment on eased lands.