

Conservation Easements

An Introduction for Private Landowners



A conservation easement limits certain uses of the land in order to advance one or more conservation objectives while keeping the land in the owner's control. It is established by mutual agreement of a landowner and a private land trust or government.

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Introduction

The conservation easement is a tool for achieving conservation in the public interest that doesn't rely on government regulations and that allows private landowners to maintain ownership and control of their land.

Tens of thousands of properties important to people—millions of acres of farms, forests, scenic hillsides, historic landscapes, open spaces in cities, etc.—have been conserved with conservation easements. While the first conservation easement was established in the late 19th century, the tool did not come into common use until the late 20th century.

A conservation easement is established by mutual agreement of a landowner and a private land trust or government.¹ The easement limits certain uses of the land in order to achieve particular conservation objectives while keeping the land in the owner's control. As the holder of the conservation easement, the land trust has the right to block inappropriate uses of the land; the owner may continue to use the land as the owner wishes—within the constraints set in the agreement that establishes the easement.

A conservation easement does not create a right for the public to access a property, unless the owner specifically establishes that right.

The conservation easement, which is an interest in real property, continues in force no matter who owns the

land in the future. Practically all conservation easements are designed to be perpetual; for nearly all land trusts and circumstances, this is non-negotiable.

A conservation easement can't be created without a land trust or government that is willing to hold it. Land trusts working in a particular geographic area can be found at www.findalandtrust.org or, in Pennsylvania, at ConservationTools.org.

Although usually not the determining factor in a landowner's decision-making, federal income tax, estate tax, and potentially other tax benefits are available in conjunction with the donation and bargain sale of easements that meet certain requirements.

Planning the Conservation Easement

Conservation Objectives

Soon after a landowner or land trust broaches the idea of creating a conservation easement, the land trust will want to talk with the landowner about the conservation objectives to be advanced by the easement. These objectives will be shaped by the character of the property, the mission of the land trust, and the wishes of the owner. For example, the land trust and owner might include any one or more of the following as conservation objectives:

- Maintain and improve water quality;
- Protect natural habitat;
- Prevent loss and depletion of soil;
- Protect scenic views;
- Prevent erosion and flooding downstream; or
- Ensure that the land is managed so that it can always support sustainable forestry or agriculture.

Restrictive Covenants

Once the owner and land trust agree on the objectives, they typically discuss which uses of the land are and aren't compatible with the objectives. Depending on

the agreed upon objectives, the owner and land trust may agree that restrictions such as the following may be necessary:

- No subdivision;
- No land development except for structures directly supporting sustainable agriculture;
- No timber extraction without a forest management or timber harvest plan; or
- No logging within 100 feet of a stream.

They may agree that the easement will need to clearly permit the owner certain uses of the land. For example, an owner may want to ensure that they can:

- Grow row crops;
- Establish a new home site for their adult child; or
- Engage in unobtrusive commercial activity on a portion of the property.

They may also agree that, depending on the details, certain uses of the land may or may not be appropriate and that the land trust should have the right to approve or disapprove an owner's proposal to engage in such uses based on the land trust's analysis of the potential impact on the protected natural resources.

Documenting Preliminary Interests and Commitments

Whether the landowner first approaches the land trust or the land trust approaches the landowner about a potential conservation easement, it is often advantageous for one or both parties to formalize their respective understandings of what each is—and is not—committing to as the conversations proceed and they devote more time and resources to the potential conservation endeavor. This formalization may take the form of a [donation agreement](#), [purchase option](#), sales agreement, or one or more other forms used by the land trust. The formalization ensures that the land trust doesn't waste donor dollars on a project that the owner isn't reasonably committed to seeing through to completion and, conversely, that the landowner doesn't waste effort if the land trust is unlikely to find the owner's needs compatible with the land trust's aims.

Easement Document

The conservation objectives, restrictions, and permitted uses agreed upon by the owner and land trust are incorporated into a legal document usually provided by the land trust. Just as the standard document used to purchase a house is long, so too is the standard document used to create the conservation easement. This is necessary in order to responsibly address the complexities of the law and the many issues that may arise when land is to be conserved for the long run.

Fortunately, just as Realtors provide a time-tested standard sales agreement for transactions, so too do many land trusts. One prominent example is the [Model Grant of Conservation Easement and Declaration of Covenants](#), a standard document to create conservation easements published by the Pennsylvania Land Trust Association. Land trusts across the country have adopted this model and adapted it for local use.

Other Planning Work

The planning of the conservation easement also requires documenting the conditions of the property in a baseline documentation report, [subordination of the mortgage](#) (if any) on the property, and other tasks, which the land trust will help the landowner understand early in their conversations. Depending on the project, survey work may be required and, if the owner intends to seek a tax deduction, an appraisal will be necessary.

Recording

After finalizing the easement document, the owner and land trust sign and record it at the county recorder of deeds office. With this action, the owner grants to the land trust the conservation easement, which gives the land trust the power and right to uphold the conservation objectives.

Stewardship

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

- 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 terms of the easement (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.

Land Trust Considerations

As a private, independent, charitable organization, a land trust, before accepting any particular conservation easement, will consider:

- Is conservation of the property consistent with the land trust's mission and goals?
- Where does conservation of the property fit into the land trust's priorities as compared to other potential conservation properties?
- Recognizing that taking on one conservation project might require forgoing another, are the property's conservation values high enough to justify the land trust using resources to conserve them instead of conserving something else?
- Can the land trust find sufficient resources (from the landowner or other potential donors) to fund both the acquisition and long-term stewardship of the conservation easement?
- Will the community generally be friendly to conserving the land—or at least not find it objectionable?

Landowner Considerations

Landowners exploring whether to establish a conservation easement on their land will want to consider a number of factors including:

- Compatibility with the land trust;
- Capability of the land trust;
- Donation versus sale;
- Costs; and
- Tax issues.

Compatibility with the Land Trust

The owner's aims should be compatible with the land trust's goals and priorities. An owner who wants to protect their forested wildlife habitat may not be a good match for a land trust focused on preserving productive farmland.

Capability of the Land Trust

Conservation easements entail a lot of responsibility for their holders. A landowner who wants to ensure that a particular organization is the right one to hold an easement should check that:

- The board of directors (or trustees) of the land trust has adopted [Land Trust Standards and Practices](#), the land trust movement's ethical and technical guidelines for responsibly operating a land trust.
- The land trust is either accredited with the [Land Trust Accreditation Commission](#) or takes regular and concrete actions to conform with the adopted [Land Trust Standards and Practices](#). (While accredited land trusts demonstrate strong conformance with Standards and Practices as verified by an independent body, a great many land trusts can and do operate at high levels of excellence without going to the expense of obtaining accreditation.)
- The land trust has sufficient financial means to monitor and, when necessary, enforce the terms of the easement grant. In practice, this means that the land trust has or is actively building a substantial stewardship fund or stewardship endowment to cover future expenses associated with its conservation easement obligations. The land trust may also purchase [Terrafirma insurance](#) to defend its conservation easements from legal challenges.

Donation Versus Sale

Most conservation easements are donated by owners who wish to protect the land they love from inappropriate development. In certain narrow circumstances, easements are purchased at a bargain price or fair value. Donations and bargain sales that meet IRS requirements can result in federal tax benefits.

Some government programs purchase conservation easements at fair value or at a bargain price. A review of these programs is beyond the scope of this guide. (For a Pennsylvania example of a state/county program that purchases easements on productive farmland and a comparison of it to land trust conservation work, see the guides [Agricultural Conservation Easement Purchase Program](#) and [Farm Preservation Options for Landowners](#).)

Costs

Stewardship of the easement takes time and money. A land trust that doesn't raise money to cover its perpetual stewardship responsibilities can't assure that conservation will be lasting. For this reason, it is a normal practice for a land trust to make a [stewardship funding arrangement](#) with an owner to help with the land trust's financial burden. This arrangement may involve one or more cash contributions by the owner at and/or following the establishment of the easement.

The planning of the conservation easement also involves costs to the land trust and owner. Again, the owner may be asked to help the land trust with its costs.

Easement planning and stewardship expenses vary widely depending on the specifics of the project.

Since not all owners can afford to make cash contributions, the land trust might alternatively seek to arrange for payments by future owners of the land or find financial support from other individuals or organizations who want to see the conservation easement established.

Tax Issues

If a conservation easement is donated or sold at a bargain price to a qualified organization and the transaction conforms with the applicable federal tax rules, the donor may receive a federal tax deduction. Since the donor may deduct only up to 50% (100% if a

qualified farmer) from their income each year, the donor can spread the deduction out over as many as 16 years.

Roughly approximated, the *maximum* value of the deduction equals the fair value of the land unencumbered by the easement minus the fair value of the land that would result if the easement were in place. The values must be determined by an appraisal that meets tax rule requirements and is completed by an appraiser qualified under the tax rules.

The cash value of the deduction—how much the landowner saves on taxes—would then be the gift's value multiplied by the donor's tax bracket. For example, a donor in the 35% tax bracket could save \$140,000 on their taxes when making a conservation easement gift valued at \$400,000.

Additional tax benefits may be available to those with high-value estates that are subject to the [federal estate tax](#).

Several states² offer income tax credits. Property tax reductions are also available in some locales.

This highly abbreviated summary leaves out myriad complexities. Seek advice from a tax advisor to fully understand the possible tax benefits.

Resources at ConservationTools.org

The website [ConservationTools.org](#) hosts a variety of resources related to conservation easements including the guides:

- [Farm Preservation Options for Landowners](#)
- [The Nature of the Conservation Easement and the Document Granting It](#)
- [What is a Land Trust?](#)

The most recent version of this guide can be found online at <http://conservationtools.org/guides/149>.

¹ Although local, county, state, and federal governments may hold conservation easements, private land conservation as conducted by independent, charitable land trusts is the focus of this guide.

² Colorado, Georgia, New Mexico, South Carolina, and Virginia offer transferable tax credits, meaning donors can sell unusable credits to other taxpayers. Arkansas, California, Connecticut, Delaware, Iowa, Maryland, Massachusetts, Mississippi, and New York also offer some form of credits.

Submit Comments

Help improve the next edition of this guide. Email your suggestions to the Pennsylvania Land Trust Association at aloza@conserveland.org. Thank you.

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