

Conservation Easements

In a Nutshell

A conservation easement is a legal agreement between a landowner and a land trust that permanently limits uses of the land in order to protect its conservation values. The easement is a voluntary land-protection tool that is privately or publicly initiated to conserve natural resources or open space on the property. Conservation easements help land owners protect agricultural or undeveloped land, especially when land values are rising rapidly.

The “How To”

An easement restricts development to the degree that is necessary to protect the significant natural resources for that particular property. Landowners and land trusts, working together, write conservation easements that reflect both the landowner's desires and the need to protect conservation values. A land trust is responsible for making sure the terms of the easement are followed. In many cases, current uses of the land such as farming or forestry continue while the conservation easement prevents intensive development in the future. A local government can work in partnership with local land owners to implement conservation easements to protect critical lands including drainage basins for public water supply.

Conservation easements allow landowners to continue to own and enjoy their land while agreeing to limit development. In most cases, a conservation easement will not require changes in how well-managed farms, forests, or recreational lands are used. The key components of most conservation easements are limits on future development and reasonable standards for timber harvesting or other uses. The purpose of the easement is to keep the land as it is today.

Conservation easements are typically created to preserve agriculture lands and natural areas that are facing development pressure on the suburban-rural fringe. Conservation easements are often limited in urban areas, due to both the lack of available open space for purchase and the high cost of undeveloped land. Conservation easements are used in all parts of the country, and many private groups exist to preserve natural lands and manage conservation easements. Local land trust groups include [The Nature Conservancy](#), The [Ozark Land Trust](#), and [The Open Space Council](#).

Conservation easements are an attractive option to a growing number of landowners across the country for a number of reasons:

- *Conservation easements are flexible.* An easement can apply to all or just a portion of the property. In addition, protected land can still be used in a variety of ways. For example, farmland protected by a conservation easement can still be used for farming and sustainable timber harvesting is permitted. Houses, barns, and similar structures are permitted within "building envelopes" while the rest of the land is kept in its undeveloped condition.
- *Conservation easements are private and voluntary.* The land remains in the owners control to enjoy and to sell or leave to heirs. Conservation easements do *not* require the owner to grant the public access to the land.
- *Conservation easements may result in financial or tax benefits.* Protecting land by restricting future

development can reduce income taxes and/or estate taxes and often has a significant impact on property taxes. An attorney or financial expert should be consulted. Occasionally a public or private entity will pay a land holder a set amount of money to forgo the development rights to the land.

Conservation easements are permanent. A conservation easement will protect private land from specific development *forever*, meaning that it runs with the land, no matter who owns it. Once an easement is signed, a land trust takes on the responsibility of ensuring that its terms are followed.

Key Decision Points to Implement a Conservation Easement:

1. **Ownership** –Determine or find an appropriate holder of the easement, whether by government or a private land trust
2. **Selection criteria**– Consider criteria to evaluate appropriateness of managing and holding property in a conservation easement: natural resources value, unique characteristic, minimum size, etc.
3. **Ongoing management** - Responsibility for the monitoring and maintenance of the easement must be assigned and the financial resources provided.
4. **Enforcement** - Provisions must be made for enforcing the restrictions of the easement.

Planning & Zoning

Chapter 5 of the [IRS Conservation Easement Audit Techniques Guide](#) lists conservation purposes. IRC § 170(h)(4)(A) (conservation easement)lists the following conservation purposes:

- Land for Outdoor Recreation or Education
- Relatively Natural Habitat or Ecosystem
- Open Space
- Governmental Conservation Policy
- Significant Public Benefit
- Historically Important Land

The [Ozark Land Trust](#) (ORLT) has created 13 steps for the conservation easement process. Following these steps can ease the process of securing land for a conservation easement.

1. Initial Inquiry
2. Meeting with Landowner and Site Visit
3. ORLT Board Preliminary Approval
4. Memorandum of Understanding
5. First Draft of C.E.
6. Review by Landowner
7. Final Draft of C.E.
8. ORLT Board final Approval
9. Title Search
10. Baseline Report
11. Pre-Closing
12. Closing
13. IRS Documentation

New York land conservation nonprofit, [Westchester Land Trust](#), provides a model conservation easement

agreement. Key provisions of the agreement are explained. Grantor's retained rights, grantee's rights, prohibited uses and restrictions, conservation purposes, and New York statutory considerations. Executing and recording easements will be necessary to implement this strategy.

Local governments can identify key areas in which to encourage use of conservation easements to protect sources of drinking water, viewsheds, and key historical or cultural sites.

Dollars & Cents

There can be initial surveying and planning costs associated with securing a conservation easement for a property. However, the landowner and his or her heirs may be eligible for significant tax advantages associated with conservation easements. The [IRS](#) provides conservation easement audit technique guide, where [tax issues](#) are discussed. All conservation easements do not qualify for an income tax deduction. To qualify as a charitable contribution, conservation easement donations must be perpetual, be donated to a qualified organization, and meet one of the "conservation purposes" test of the Internal Revenue Code. [IRS Code Section 170\(h\)](#) defines general "conservation purposes." [IRS Form 8283](#) reports noncash charitable contributions. Donors must attach a copy of the conservation easement deed or provide a detailed description of the terms of the easement.

Income Taxes

A conservation easement often qualifies as a charitable gift that may be deductible for federal and state income tax purposes. The easement must be in perpetuity, donated to a "qualified conservation organization" like the Ozark Regional Land Trust, and must serve a valid "conservation purpose" as defined by the IRS.

The value of the gift, determined by a qualified appraiser, equals the difference between the fair market value of the property before and after the conservation easement takes effect. There is no standard value of easements since each one is unique and they must therefore be individually appraised. In general, appraisers have found that conservation easements range in value between 20% and 70% of the pre-easement value of the land, depending on the type and location of the land and the terms of the conservation easement.

If a landowner donates a conservation easement meeting IRS rules, the landowner can take in one year a deduction in an amount up to 30% of his or her adjusted gross income. (In certain cases a 50% deduction is possible.) If necessary, any unused amount of the deduction can be "carried forward" for up to five additional years.

NOTE: Congress occasionally changes these rules and it is important to review current laws.

For example:

Market Value Before Conservation Easement \$200,000

(100 Acres @ \$2000)

Less Market Value After Conservation Easement \$120,000

(100 Acres @ \$1200)

Value of Conservation Easement \$ 80,000

If \$80,000 exceeds 30% of the landowner's adjusted gross income for the tax year in which the gift was made, the landowner can claim the rest of the deduction for up to five more successive years.

Estate Taxes

When a landowner executes a conservation easement, he or she is lowering the value of his or her taxable estate, and therefore lowering the potential estate tax liability. Many landowners find conservation easements an effective way to protect their heirs from estate taxes on highly valued land, to ensure that the family can continue owning and enjoying the land, and to secure the land from future unwanted development. In the past, Congress has allowed for additional exclusions from estate taxes for land subject to a donated conservation easement.

NOTE: As with the income tax provisions, these rules are changed occasionally and it is important to review current laws.

Property Taxes

Land in Missouri that is subject to a conservation easement could be eligible for property tax benefits according to [Section 67.895 of R.S.Mo.](#), which states: “After transfer and acquisition of any such interest [including conservation easements] pursuant to sections 67.870 to 67.910, all county and municipal assessors and taxing authorities, in determining the assessed valuation placed on such open space or area for purposes of taxation of the private ownership therein, shall take due account of and assess private property interests with due regard to the limitation of future use of the land.” ORLT is not aware of a similar statute existing in Arkansas, but individual assessors may well take into account restrictions imposed by a conservation easement when assessing the value of property for local tax purposes.

NOTE: *The above discussion of complex tax issues has been simplified for purposes of providing general background information. The financial implications for landowners will vary with their specific circumstances. Moreover, tax laws change over time and this information may become outdated. Landowners are advised to seek professional counsel to determine their specific tax benefits.*

Measuring Success

The Wetlands Reserve Program provides landowners options to protect, restore, and enhance wetlands. The “[Analysis of Missouri Wetland Reserve Program \(WRP\) Easement Monitoring Data](#)” gives results of Missouri’s wetland. The number of easement type agreements, either being cost-share, 30-year or permanent, were recorded. Also the analysis gives the total number of unique species of plants and animals and the percentage of land they occupy. The WRP monitoring dataset shows that 481 (81%) of the 594 easements were flagged as being ranked important for status species. Five observed species were said to be rare, threatened or endangered.

Heartland Conservancy’s “[Pursuing a Conservation Easement](#)” gives a more in depth view of conservation easements. According to this document, conservation easements should achieve one of the following:

- Preserves land for public outdoor recreation or education
- Protects relatively natural habitats of fish, wildlife, or plants

- Preserves open space-including farms or forests – either scenic enjoyment or in keeping with a clearly delineated public policy
- Preserves historically important land or certified historic structures

Discover More

Heartland Conservancy's [Pursuing a Conservation Easement](#) provides the content of a conservation easement. Heartland answers commonly asked questions such as “What if my property is mortgaged?” or “Does a conservation easement grant public access to my property?” Heartland also discusses options for conservation methods such as land donation, donating a remainder interest, donating land by will.

The Nature Conservancy provides examples and strategies for protecting nature. [Urban strategies](#) focus on what highly populated cities such as New York, Los Angeles, Houston, and Chicago are implementing to integrate natural infrastructure into planning and developing for further growth. Conservation information for [Missouri](#) and [Illinois](#) is available too. Nature Conservancy provides [blogs](#) to learn what others are doing to conserve land.