

What is a Conservation Easement?

A conservation easement (or conservation agreement) is a voluntary and legal contract between a landowner and a land trust or government agency that permanently specifies limits uses of the land in order to protect its conservation values. It allows a landowner to continue to own, use, sell, or pass land onto their heirs.

What are Conservation Values?

The Internal Revenue Service allows tax deductions for donations of land value that provide one or more of the following “Conservation Values”:

- Farmland and forestland
- Significant wildlife habitat
- Public recreation and/or education
- Scenic enjoyment
- Historic and cultural resource preservation

To qualify for any potential tax benefits, the Internal Revenue Code and Idaho Tax Code also require conservation easements to be perpetual and ‘run with the land.’

Can some development be allowed under a conservation easement?

In some instances it may be possible to reserve the right to build a home or homes on the property in the future. When you donate or sell a conservation easement on your land, you give up some of the rights associated with the land such as a subdivision. The key to meeting IRS requirements is to preserve the conservation values of the property in perpetuity.

Future owners also will be bound by the easement’s terms. The land trust or government entity holding the easement is responsible for making sure the easement’s terms are followed.

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.

Are conservation easements popular?

They are very popular. In the 5 years between 2000 and 2005, the amount of land protected by using easements doubled to 6.2 million acres in the United States. Landowners have found that conservation easements can be flexible tools. They offer a way to increase conservation of agricultural land, fish and wildlife habitat, historical sites, significant geologic landforms and possibly public access for outdoor recreation while providing either tax incentives or cash to landowners.

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

An easement restricts development to the degree a landowner desires to enter into a conservation easement. Sometimes this totally prohibits construction, and sometimes it doesn't. Landowners and land conservation organizations, 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, forestry and ranching.

What is involved in the conservation easement process?

- Initial discussions / landowner development plans:
 - The landowner will ultimately need to lay out his long-term goals for the property, including planned developments and alterations of the current land status.
- Information gathering / baseline assessment
 - This step inventories and documents the resource values of the easement proposal. A Baseline study looks at the property's historic and present land uses and its many distinctive features including, man-made features, ecological aspects, wildlife use and habitat, soils, hydrology, geology, recreational and scenic values.
- Drafting the Easement
 - The landowner and the easement holder work together with respective legal advisors to draft the conservation easement for the property. Both parties can negotiate toward an easement that meets the landowner's goals for the property and provides for protection of conservation values.
- Appraisal of the Property
 - With a final draft easement in hand, an appraiser can assess the value of the easement donation. This step is the responsibility of the landowner, who must justify that value to the IRS or other taxing entity.
- Sign and record the Easement
 - All conservation easements must be approved by the board of the designated land trust or the agency's governing body. After approval, the Conservation Easement is signed, and the document is recorded at the courthouse in the appropriate county.
- Monitoring the Easement
 - The group accepting the easement assumes responsibility for assuring that easement provisions will remain effective in perpetuity. On-site monitoring of the property will occur once or twice annually to ensure easement conditions are met.

Is public access required under a conservation easement?

No. Public access or a trail corridor can be included only if desired by the landowner.

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 at this time. 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 the conservation easement holder's responsibilities regarding conservation easements?

The land trust or agency is responsible for insuring the limits of the conservation easement are met. Therefore, the property is monitored on a regular basis -- typically once a year - to determine that the property remains in the condition prescribed by the easement document. Written records of these monitoring visits are maintained. Many land trusts and agencies work with landowners to establish an endowment to provide for long-term stewardship of the easements they hold.

What are the economic impacts to my community of conserving open space?

Many reports have shown that conserving open space in communities around the U.S. attracts jobs, enhances property values, and saves billions in government costs. "Green infrastructure" is a term being used by communities to talk about the economic, environmental and societal benefits of undeveloped open space.

How is the Value of the Conservation Easement determined?

The value of the conservation easement is the difference between the value of the land without restrictions (when it can be subdivided and sold for development) and the value of the land subject to the restrictions defined by the conservation easement. A qualified appraiser can determine those values and the difference between the two. When the conservation easement qualifies under IRS regulations, the value of the donated conservation easement also determines the value of the charitable donation.

What are financial benefits associated with conservation easements on my property?

Financial compensation is typically a driving factor for conservation easements. In Idaho the financial benefits include:

- Income and possible property tax benefits for donating a conservation easement or a "bargain sale" of the easement if it is purchased.
- Estate tax savings
- Cash payments for the conservation easement (which may be exposed to capital gains taxation).

In August 2006 legislation was enacted expanding the tax benefit for donations of conservation easements in 2006 and 2007. Learn more by contacting your financial advisor, local land trust or reading Land Trust Alliance publications that provide basic information on this subject (www.lta.org).

What are the Estate Tax Savings?

You may be interested in reducing the value of your land so that estate taxes will not be so high that your heirs cannot afford to hold onto the land. 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.

What is a Grantee (land trust or governmental agency partner) and Stewardship Endowment?

As the owner of "partial interests" in the property, the grantee is charged with monitoring and maintaining the integrity of the easement. This involves enforcement of the requirements of the easement and good communication with current and future property owners to ensure they adhere to the terms of the conservation agreement. Therefore, the grantee must have the capability to defend the easement 10, 20 even 200 years from now. So for those reasons many grantees have a stewardship endowment fund and ask the easement donor to consider contributing to this fund. This type of charitable donation is often fully tax deductible.

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.