

LANDOWNER INITIATIVES: CONSERVATION EASEMENTS

(fact sheet #17 of the Shoreland Management and Lake Classification Series)

ISSUE:

Definition: Conservation easements are legal agreements entered into voluntarily by a property owner with the purpose of protecting ecologically significant areas occurring on a parcel of property. Property ownership allows the landowner to exercise a collection of rights such as the right to sell, lease and mortgage the property. With a conservation easement, the property owner sells or gives away some of the rights associated with landownership such as the right to construct buildings, harvest timber or clear vegetation. *Ultimately, the property owner gains a tax benefit or compensation for the sale or donation of specific property rights. The property owner also gains satisfaction in knowing that he or she is protecting the property's resources for future generations.*



Conservation easements:

- ❖ Are designed to protect the resource values of specific parcels of property and to address the needs of individual property owners.
- ❖ Allow the property to remain in private ownership and may result in substantial tax benefits.
- ❖ Represent a more flexible and long-term means of protecting shoreland values such as wildlife habitat, natural beauty, and shore buffer protection for water quality.

FACTS ABOUT CONSERVATION EASEMENTS:

TYPE OF PROPERTY INVOLVED. Any property with significant natural resource values can be protected. Wetlands, scenic areas, habitat for rare and endangered species and areas with sensitive near shore zones can be protected through a conservation easement.

PARTIES INVOLVED AND RESPONSIBILITIES.

The Owner of the Property. Any owner of property with significant resource values may grant an easement. If a parcel of land is owned by more than one person, all individuals must consent to the easement agreement. If an individual is interested in obtaining tax benefits, the easement must be donated or sold for less than fair market value to a public agency or to a conservation organization qualified as tax-exempt under section 501 (c)(3) of the Internal Revenue Code. Land trusts typically satisfy this criterion.

The Easement Recipient. The organization which accepts a donation of an easement or buys an easement is required to accept certain responsibilities. The primary charge of the holder of the easement is to monitor the property and enforce the terms and conditions of the easement. If a visit to the property shows that the conditions of the easement have been violated, the land trust or recipient of the easement has the right to require that the property owner address the problem, correct the violation and restore the property to its original condition.

KINDS OF LAND RESTRICTIONS. The amount of restrictions placed on a property will vary with the level of protection needed to safe-guard the resources of interest. Land restrictions can prohibit all development or limit development to certain types and uses. Certain areas on the property, such as the shoreland zone or an area within 200 feet of the ordinary high water mark, could be subject to greater controls than areas which are located inland. An easement could also specify that all activities which alter the natural character of the land are prohibited. Many possibilities exist.

DURATION OF EASEMENTS. An easement may be drafted to last forever, in which case it is called a perpetual easement. Only gifts of perpetual easements qualify the grantor for income and estate tax benefits. Easements run with the land. This means that all subsequent owners of the property must abide by the terms of the easement. The easement is recorded at the town or county records office to give notice to all who may be interested in the property.

INCOME TAX, ESTATE TAX AND PROPERTY TAX ISSUES.

Income Tax. Donating a conservation easement qualifies the property owner for a tax-deductible charitable gift provided the easement is perpetual and is donated “exclusively for conservation purposes” to a qualified conservation organization. “Conservation purposes” is defined to include, in part, the following:

1. the preservation of land areas for outdoor recreation by, or the education of, the general public;
2. the protection of relatively natural habitats of fish, wildlife, or plants, or similar ecosystems;
3. the preservation of open space-including farmland and forest land-for scenic enjoyment or pursuant to an adopted governmental conservation policy.

The value of the easement is determined by having the property in question appraised at fair market value without the easement and with the easement. The difference between these two appraisals is the value of the easement.

Estate Tax. Heirs to large tracts of open space may have to deal with significant estate taxes. The levy is typically based on the fair market value of the land and not on its existing use. Often a high estate tax may force the heirs to sell the property in order to pay the taxes. A conservation easement on the property, however, has the effect of requiring that the property be valued at its *restricted value, not at its fair market value*. Assuming the easement reduces the value of the property, the value of the estate will be lower and the estate tax will be less.

Property tax. Property taxes may be reduced if the conservation easement reduces the development possibilities for the property. Whether this occurs or not is largely the result of site specific factors such as local property tax assessment practices.

References and additional sources of assistance:

Lind, Brenda. 1991. The Conservation Easement Stewardship Guide: Designing, Monitoring, and Enforcing Easements, Land Trust Alliance and Trust for New Hampshire Lands.

Barrett, T.S., Nagel, S. 1996. Model Conservation Easement and Historic Preservation Easement, 1996. Land Trust Alliance.

Conservation Options-A Landowner's Guide. 1996. Land Trust Alliance.

Diehl, J., Barrett, T.S. The Conservation Easement Handbook: Managing Land Conservation and Historic Preservation Easement Programs. 1988. Trust for Public Land and Land Trust Alliance.

For additional sources of assistance with various voluntary land protection measures contact:

Gathering Waters Inc.(608/251-9131); 1000 Friends of Wisconsin (608/259-1000); Cedar Lakes Conservancy Foundation (414/962-3670)

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For more information, contact your regional Department of Natural Resources lake coordinator, the Wisconsin Association of Lakes [800/542-5253] or UWEX/UW-Stevens Point [715/346-2116].