



What Is a Conservation Easement?

A conservation easement is a legally recorded agreement by which landowners voluntarily give up certain rights to the use of their land, such as the right to develop it. In return, landowners may receive a monetary payment, tax benefits, or other compensation.

Description

Historically, easements have been used primarily for public utilities, where the utility needed to cross private lands to carry out its business. The utilities negotiate an easement that gives them access to the utility lines and restricts the landowner's use of the land under easement.

In recent years, the conservation easement has become one of the most common types of easements employed in land-protection efforts. A conservation easement protects important land resources by allowing landowners to voluntarily limit or prohibit certain uses of the land, such as future development. The easement is held and supervised by another party—generally a governmental or nonprofit organization (such as the Minnesota Land Trust)—who is responsible for enforcing the terms of the agreement. Conservation easements are the primary legal mechanism used to protect land in a purchase of development rights (PDR) or transfer of development rights (TDR) program (*see Fact Sheet No. 8 and Fact Sheet No. 9*).

In return for granting a conservation easement, landowners are usually compensated for the value of the rights they agree to give up. Provided that certain conditions are met, donors of easements may also be eligible for income, estate, or property tax benefits. Generally one such condition is that there is an established, recognizable public benefit, such as protecting rare species, public water supplies, or scenic vistas visible from roads. Public access to the land is NOT a requirement.

In most cases, conservation easements run with the title to the land so that all future owners of the land are bound by the original agreement. Although the duration of a conservation easement can vary depending on the desires of the landowner, tax and other benefits are generally available only for perpetual easements. Many land trusts will only accept perpetual easements since they are the only means to ensure permanent protection of the land.

Frequently Asked Questions

How does a conservation easement benefit a landowner?

There are many benefits to granting a conservation easement. One of the primary benefits for most people is knowing that a conservation easement will ensure that their land remains in agricultural production or as open space for future generations to use and enjoy. To make conservation easements more equitable to landowners, some communities establish purchase of development rights programs (*see Fact Sheet No. 8*) that allow landowners to receive a payment for retiring their development rights. Such programs allow a landowner to receive equity from their land

without having to sell it outright, which can be a significant benefit for farmers or individuals close to retirement. Some landowners receive tax benefits from a conservation easement (see below). Conservation easements also benefit agricultural communities as a whole by making agricultural land affordable again. Because landowners already receive compensation for the development value of the land, they can afford to sell the land for agricultural uses at its appraised agricultural value. Despite the many benefits to placing a conservation easement on your property, doing so is a big step and all affected family members should be involved in the discussion.

What type of land can be protected through conservation easements?

Any type of undeveloped or sparsely developed property can be protected with a conservation easement. Conservation easements can be used to protect agricultural land, forested land, wildlife areas, wetlands, and other scenic or natural lands.

What effect does a conservation easement have on my property rights?

A landowner who conveys a conservation easement retains all rights to use the land for any purposes that do not interfere with the conservation of the property as stated in the terms of the easement. Among other things, this means the landowner retains the title to the property, the right to sell it, the right to farm it, the right to restrict public access, and the right to give it to whomever he or she chooses. However, most or all of the rights to develop the land are restricted or eliminated. The terms of a conservation easement are individually tailored to reflect each landowner's particular needs, situation, and property. For example, one landowner may agree to prevent any future development. Another may want to retain the right to construct an additional barn or shed. A third landowner may want to reduce, beyond what is allowed by current zoning, the number of homes that may be built on a certain parcel. The easement can be written to apply to the entire property or to only a portion of it.

What rights does the easement holder have to my land?

If the Minnesota Land Trust or another qualified organization accepts an easement on your land, it is obligated to oversee and enforce the easement's terms and conditions. For example, an organization has the right to enter and inspect the property (usually once a year) to ensure that the terms of the agreement are being upheld. Except in unusual circumstances, these visits are scheduled with the landowner. The organization does NOT have the right to use your property for any purpose, nor does the easement allow public access to the property since it remains privately owned.

How is the value of the easement determined?

Land ownership can be viewed as owning a variety of separate rights to the property. These rights include, but are not limited to, the right to farm the land, the right to build on the land, and the right to exclude the public. When a conservation easement limits any of these rights, the value of the land is affected. One of the primary ways the value of the easement is determined is by having a before-and-after appraisal completed by a qualified appraiser who meets federal requirements. First, the land is appraised in light of its full development potential. Then the land is appraised again, taking into account the easement restrictions that limit some or all of the property's development rights. The difference between these two figures is the value of the easement. Appraisal costs are usually the responsibility of the landowner.

What are the tax benefits of a donated conservation easement?

Under the IRS code, the donation of a qualified conservation easement may be treated as a charitable contribution. Donation of easements, whether during the landowner's life or by bequest, can also reduce the value of the land upon which estate taxes are calculated. The estate tax bene-

fits of a conservation easement can often mean the difference between heirs having to sell property to pay estate taxes or being able to keep the property in the family. Finally, the conveyance of a conservation easement may reduce a landowner's property taxes. This depends on current zoning and land use, current assessed value, and whether the owner participates in a current use-assessment program like Green Acres or the Metropolitan Agricultural Preserves Program. Under Minnesota law, county assessors must take a conservation easement into consideration in establishing the market value of the land subject to the easement. Landowners wishing to learn about potential tax benefits would be wise to consult a qualified land-use attorney who can help them consider the full range of tax options and liabilities.

What criteria must be satisfied for land to be eligible for tax benefits?

To be eligible for most of the above tax benefits, the easement agreement must be entered into with a qualified conservation organization, such as the Minnesota Land Trust, or a local unit of government. In addition, the terms of the easement must be perpetual and they must meet other IRS requirements. The criteria that must be satisfied for the Minnesota Land Trust to accept such a donation are available upon request from the organization.

Why is a conservation easement usually permanent?

Because public money is often used to purchase development rights from a landowner wishing to grant a conservation easement, the community benefits only if they know that the land will be permanently protected. In some cases—such as transfer of development rights programs—communities agree to accept more dense development in some areas of the city or township in exchange for other landowners agreeing to restrict development on their land. Again, the public benefits are enjoyed only if the agreement to restrict development is permanent. In either case, the landowner is provided with monetary compensation for giving up development rights to their property. In rare cases, a conservation organization may choose to let a landowner buy out a permanent easement if the purpose for which the agreement was created no longer exists. For example, if a landowner has granted a conservation easement on a 40-acre parcel, and all of the land surrounding the parcel has become developed, the holder of the easement may determine that the benefit of the original agreement is no longer being realized and allow the landowner to essentially "buy back" their development rights.

Where can I learn more about conservation easements and purchase of development rights programs?

Dakota County has just passed a referendum to fund a purchase of development rights program known as the Farmland and Natural Areas Project (*see Fact Sheet No. 11*). To learn more about this program or about conservation easements, contact Dakota County planner Kurt Chatfield by phone at 952-891-7022 or by e-mail at kurt.chatfield@co.dakota.mn.us.