



Wisconsin Land Trusts

What is a Land Trust? Conservation land is essential to the health and beauty of Wisconsin. Land trusts are non-profit organizations that help protect land for public benefit. There is no legal definition of “land trust”: it’s a term used to describe organizations that, in pursuit of conservation missions, own land, hold conservation easements or both. These organizations permanently protect important natural, recreational, scenic, historic and working lands in their communities. Among the great strengths of land trusts is their community focus: local swimming holes, scenic features and open parkland may never attract state or national resources for protection. But land trusts, whose missions are determined by their volunteers and members, work to protect the special places that make Wisconsin home.

How do land trusts work?

Land trusts use a variety of tools to help private landowners who opt to protect the conservation values of their property. Most commonly, land trusts accept donations of or purchase property or conservation easements. (See our other fact sheets for more information about different conservation transactions).

Once a conservation deal has closed, land trusts hold the perpetual responsibility to manage the lands they own and make sure future land owners and land uses uphold the terms of any conservation easements they hold.

In addition, many land trusts work cooperatively with government agencies by acquiring or managing land, participating in comprehensive planning endeavors or holding conservation easements on public properties. As private non-profit partners, land trusts can access resources that agencies could not otherwise use to help protect important places.

Wisconsin’s Land Trusts

The land trust movement is the fastest growing conservation movement in the country and Wisconsin’s land trust community is no exception. In 1994 there were 12 land trusts working in the state. Formed by citizens and neighbors concerned about the future of their communities, today there are more than 50 local and regional land trusts preserving places with special ecological scenic, recreational and cultural value. Collectively they have protected more than 200,000 acres of land.

Wisconsin land trusts are a diverse group. Some are all-volunteer organizations, others have several paid staff. There are a number of land trusts working regionally across many counties. Others work more locally, focused on a particular resource. Wisconsin land trusts have accomplished lasting protection of forestlands, working farms, long stretches of undeveloped shorelines, acres of native prairie and much more .

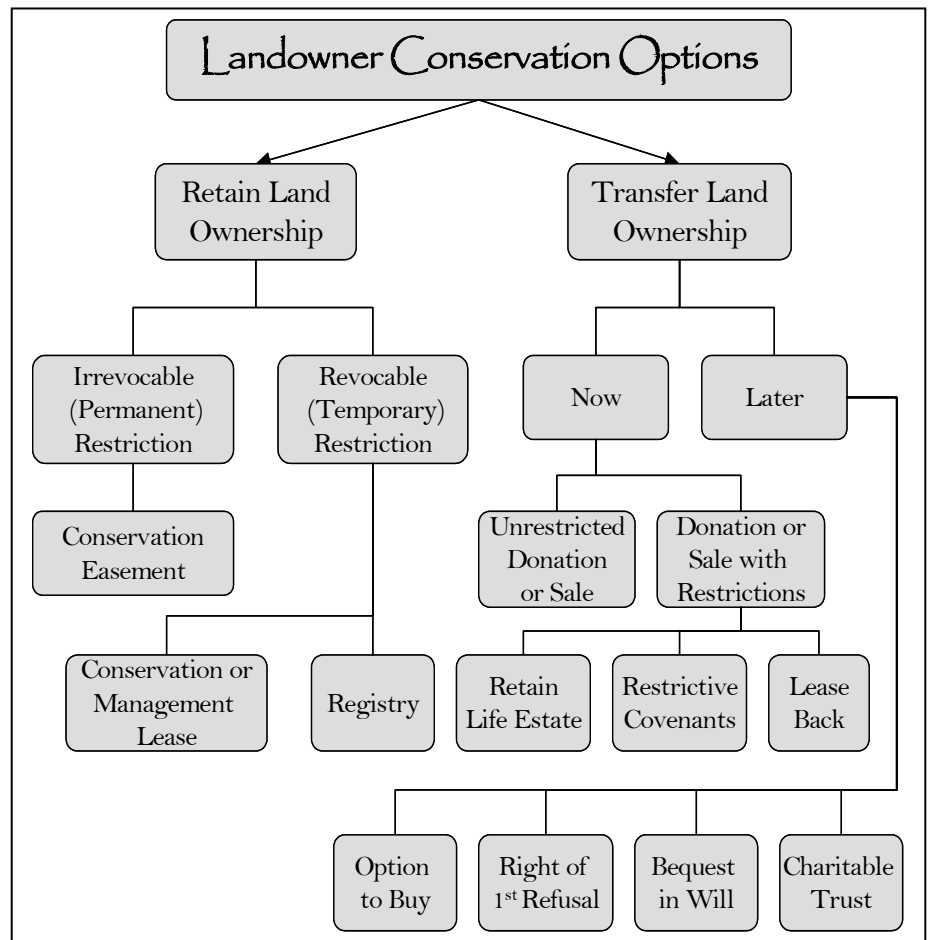
To find a land trust in your community, refer to the Land Trust Map and Directory on our website: www.gatheringwaters.org. For more information about land trusts and the conservation options they offer, contact us at (608) 251-9131.

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Conservation Options for Landowners

Deciding which option is right for you

Land trusts provide an opportunity for you to leave a legacy of unspoiled land and water resources through a variety of voluntary conservation options. If you are considering conservation, your first step is to talk to your local land trust about how you might work together to ensure protection of your property. This flowchart lists options that might suit your family's goals and the land trust's mission. Each private land protection arrangement is unique – the result of conversations between landowners and land trusts. It is also important to talk with your legal or financial advisor as you consider your conservation options. This info-sheet is designed to help you start thinking about lasting protection for the land you treasure.



Conservation Easement

A conservation easement is a voluntary, permanent agreement that legally restricts the use of your land in order to preserve its conservation values. Each conservation easement is designed to reflect your land's special values and your family's goals. You retain the right to own and sell your property but the easement restrictions will always remain with the property's title. Most conservation easements are donated by the landowner to a land trust, and such donations can provide significant tax advantages.

Land Donation

Some landowners donate full ownership of their property to a land trust. This option may be best suited for you if you do not wish to leave your land to heirs, or no longer use the land. It is important to contact a land trust before making this decision. Donations can include all or just a portion of your property.

It is possible to donate a property now and retain the right to live on and use the property during your lifetime. This is known as a "reserved life estate."

Bargain Sale

With this choice you sell your land or an easement to a land trust at a price below what you could receive on the open market. The difference between the "fair market value" and the actual sale price is considered a donation to the land trust, and therefore potentially tax deductible (though you may owe taxes on the proceeds of such a sale, as you would on any such capital gain).

Bequest

A bequest is also called a "donation by devise" and transfers ownership of your property to a land trust through your will. This is a good choice if financial compensation is not a necessity and you want to maintain the current use of your land. In addition, this option can confer estate tax benefits.

Land Sale

This option provides financial compensation for protecting your land. While most land trusts have limited funding for purchases, it may be possible for them to fundraise in order to purchase a particularly important piece of land.

Many land trusts in Wisconsin use the Knowles-Nelson Stewardship Fund, a state fund for land acquisition by the WI-DNR, local governments and non-profit conservation groups. When land trusts work with the Stewardship Fund or any public grant program, landowners should expect that there will be several requirements to meet, including perhaps a property management plan, donation of an easement to the state or making the land open to the public whenever possible.

Registry

If you are concerned with protecting the natural values of your land but are not ready to permanently protect it, you may want to consider this option. By registering your land with your land trust you make a commitment to protect the natural elements, features, and characteristics of your property. You also agree to notify the land trust before you plan to sell or transfer the property and of any threats to your land.

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One Landowner's Story

In autumn Doug Ziegler looks northwest during his commute to enjoy a magnificent display of fall colors. Fortunately the fall colors will remain forever for all to enjoy, thanks to Doug who donated the 180 acre parcel to the Cedar Lakes Conservation Foundation. The land is home to spruce, fir, and jack pine trees: a creek winds within its boundaries. "It bothered me that it would end up with driveways on it, and I wanted to do something about it" he explains. Doug has fond memories of picking watercress and nuts as a boy: he wanted his children and grandchildren to have the opportunity to do the same.

Because of his donation, this land is open to cross-country skiing, bird watching and other activities. The protected creek contributes clean water to a largely urban watershed. Cedar Lakes Conservation Foundation is actively restoring natural areas on the property and no-till farming continues on a portion of the land. Doug also realized financial benefits for protecting the land: donating the land to a land trust lowered his estate's value and in turn the eventual estate taxes. This partnership is just one example of how Wisconsin landowners are working with land trusts to save the places that make Wisconsin special.

For more information visit www.gatheringwaters.org or call 608-251-9131.



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Conservation Easements

What is a Conservation Easement? A conservation easement is a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. Conservation easements allow landowners to continue to own and use their land, sell it or pass it on to heirs, and protect the important natural features of their property.

When you donate a conservation easement to a land trust, you voluntarily give up some of the rights associated with the land in order to protect its conservation values. Conservation easements are very flexible agreements. An easement on property that is home to rare wildlife might prohibit any development, for example, while an easement on a working farm might allow continued farming and additional agricultural structures. An easement may apply to all or a portion of a property and need not require public access.

Conservation easements are designed to benefit the public by forever protecting conservation values. Therefore, they are perpetual agreements. Future owners will be bound by the terms of the easement. The land trust or organization holding the easement is responsible for making sure the terms of the easement are upheld.

Conservation easements can be donated or sold. If a donation meets the federal tax code requirements as a qualified conservation contribution, it can be claimed as a tax-deductible charitable donation.

This fact sheet covers some conservation easements basics. Interested landowners should consult with their own financial and legal advisors to learn more about how a conservation easement might help them meet their conservation and financial goals.

Q. Who can “hold” a conservation easement?

A. A qualified nonprofit, tax-exempt conservation organization - such as a land trust or conservancy - may hold a conservation easement, as can federal, state or local units of government.

Q. Who decides what restrictions are included in a conservation easement?

A. The landowner and the land trust or other easement holder decide together what is needed to protect the land's conservation values and meet the financial and personal needs of the landowner's family. If a conservation easement is purchased using particular grant funding, grant program requirements may also influence what the easement restricts or allows.

Q. If I donate a conservation easement, does the land trust have an ownership interest in my land?

A. No. Conservation easements are non-possessory interests in real property. Once an easement is conveyed, the only thing the easement holder “owns” is the legal responsibility to ensure that the terms of the easement are upheld.

Q. What are the easement holder's roles and responsibilities?

A. When a land trust or government entity accepts a conservation easement, it takes on perpetual obligations to monitor the property and enforce the easement terms. Once an easement is established, the land trust documents the site's conservation values, performs periodic site inspections to ensure all the easement's conditions are being honored,

and keeps all future owners of the site informed of the easement agreement.

In the event that the terms of an easement are violated, the easement holder is accountable for making sure any damage to the conservation values on the land is repaired. The easement holder has the right and responsibility to take legal action, if necessary, to enforce conservation easements.

Q. Does a conservation easement grant public access to land?

A. Conservation easements do not necessarily grant public access, although public access to protected land can be a stipulation of an easement if that is mutually acceptable to the landowner and the easement holder.

Q. What effect does a conservation easement have on a landowner's ability to sell, develop or pass the land to heirs?

A. While restrictions defined in a conservation easement run with the property forever, land protected in this way can be sold, passed to heirs or otherwise transferred.

Q. What are the financial or tax benefits of donating a conservation easement?

A. Donation of a conservation easement to a qualified organization is treated as a charitable deduction for tax purposes if it meets federal tax code requirements. There are also rules in the federal estate tax laws that favor property protected by conservation easements. (The tax benefits for conservation gifts deserve more explanation than fits this information sheet. See Gathering Waters Conservancy's information sheet, *Tax Benefits of Working with a Land Trust* for additional information).

Q. How is the value of a conservation easement determined?

A. The value of an easement is the difference between the property's fair market value before and after the conservation easement is conveyed. Easement values vary greatly: in general, the highest value easements are those placing broad restrictions against development

on open space under intense development pressure.

The value of conservation easements is heavily influenced by the specific terms of each easement. Therefore, any attempt to "ball park" the value of an easement before those terms are defined is speculative, at best. Conservation easement values, either for purchase or for tax-deduction purposes, must be determined by a qualified land appraiser and must meet specific appraisal requirements.

Q. Will a conservation easement reduce property taxes?

A. Land subject to a conservation easement may see a reduced assessment. Under Wisconsin law, local property tax assessors are required to consider the effect of a conservation easement when setting the taxable value of the property. But in practice, assessments of eased land have varied widely in the state.

Q. Can a conservation easement be undone?

A. Only in rare circumstances and only by judicial decision can a conservation easement be extinguished. They should be understood as permanent agreements.

For More Information

Local land trusts are the best source of information about how a conservation easement might be used to protect your property. To find a Wisconsin land trust near you, visit the land trust directory at www.gatheringwaters.org.

The Land Trust Alliance publication "Conservation Options: A Landowners Guide" is available for purchase from www.lta.org.

Landowners considering a conservation easement should seek the advice of an attorney with conservation easement experience.

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Tax Benefits of Working with a Land Trust

Most people who donate land or a conservation easement to a land trust are motivated by love for the land and their wish to see that land preserved for future generations. Some donors also take advantage of tax benefits associated with land conservation gifts.

Here is a short summary of the tax incentives for qualified conservation gifts. Tax laws change frequently, and this information only briefly describes potential benefits. Anyone considering conservation gifts as part of their financial or estate plans should **consult an attorney or tax planner familiar with these conservation tax benefits.**

Gifts of Money or Other Assets

Outright cash gifts are the simplest way to support a land trust and gain a tax deduction. You can also donate other assets, like securities, stocks or life insurance. The IRS rules governing donations vary according to the type of gift. Such donations are deductible up to the value of the donated item. Taxpayers may deduct up to 50% of their adjusted gross income for cash donations.

Donation of "Qualified Conservation Contributions"

The value of a gift of either land or a conservation easement, if that gift meets IRS qualifications, can be deducted from the donor's federal income taxes. Under current tax laws, landowners who donate conservation easements or land to land trusts or government bodies may be able to deduct the fair market value of their donation up to 30% of their adjusted gross income in the year they make the gift. Any remaining value can be carried forward as deductions for 5 years. Donations may also be in the form of a bargain sale, in which the landowner sells property or an easement for less than fair market value. The difference between the fair market value and the sale price is the basis for any income tax deduction. *(A more generous, 50% incentive for conservation easement gifts expired in 2009. There is a well-supported effort to have Congress reinstate that increased benefit in 2010).*

Possible Future Benefits for Farmers

A now-expired 2009 law allowed farmers to deduct up to 100% of the value of a donated conservation easement from their income taxes. Farmers are defined as those who receive more than 50% of their income from "the trade or business of farming," and can be an individual or a corporation. *Conservationists are hopeful that the 100% deduction will be reinstated by congress, but it does not currently apply to easements donated after 12-31-2009.*

Estate Taxes

Estate tax is levied on a property's value at its "highest and best use," which is usually the amount a developer would pay. The resulting tax burden can be challenging for heirs to valuable properties. Fortunately, the estate tax system includes some generous incentives for conservation gifts. Briefly:

- A conservation easement may reduce estate taxes because the easement may reduce the value of the property.
- An easement donated in a will can reduce the taxable value of an estate.
- In qualifying circumstances, tax law also allows for a 40% reduction in the value of the land protected by a conservation easement. This reduced value is the basis for any estate tax.
- Qualifying easement donors are eligible for an additional exclusion from estate tax of up to \$500,000.

Important Considerations

Achieving tax savings through a conservation gift is possible; the conservation tax incentives have helped thousands of landowners choose lasting conservation. However, tax savings are neither guaranteed nor expeditious.

Conservation gifts can take several months to close and potential federal tax benefits vary with the particulars of each donation. To qualify for deduction, gifts of land or conservation easements must:

- 1) *Be to a qualified organization* - The easement must be granted to a qualified charitable conservation organization or a public agency charged with overseeing land conservation or historic preservation. The recipient organization "must have the resources to...monitor and enforce" the easement restrictions.
- 2) *Be for conservation purposes* - An easement must be granted exclusively for conservation purposes. The IRS has a broad definition of "conservation purposes" that includes preservation of natural habitats or resource lands, historic sites, scenic landscapes, wildlife corridors, areas for public education or recreation, and open spaces.
- 3) *Be permanent* - donated conservation easements must be granted in perpetuity.
- 4) *Be properly appraised* - The appraisal to determine the easement value must meet strict federal substantiation requirements as specified in federal tax law regarding conservation easements.
- 5) *Be reported using IRS Form 8283* - The easement donor must complete Form 8283 including the value of the donation, and have the recipient organization sign the form to acknowledge receipt of the easement.

Local Property Taxes

Local property tax assessments are based on a property's full-market value, which takes into consideration the property's reasonable development potential. If a conservation easement reduces or removes this potential, the assessment and, accordingly, the property taxes, may be reduced. Wisconsin Statute §70.32(1g) requires local tax assessors to consider the effects of a conservation easement when assessing property. In practice, there has been wide variation in how easements are considered by assessors across the state.

For More Information

An experienced land trust is a good source of information about your land conservation options. They can illustrate successful examples of land donations and conservation easements, and outline the steps a landowner should take to examine the available options. Land trusts *cannot* provide legal or financial advice, however, and they cannot guarantee the success of a particular plan or give potential donors a "ball park" estimate of a tax break. Conservation donors should seek qualified, independent counsel from legal and financial experts familiar with the laws pertaining to charitable gifts of land and easements.

Additional information about the conservation tax incentive is available at www.lta.org/policy/tax-policy.

Saving Family Lands, volumes I, II and III by Stephen Small.

These books on conservation tax incentives by the author of the tax laws are available for purchase from Gathering Waters Conservancy.

The IRS rules for qualified conservation gifts are in the tax code in IRC Section 170(h) - that section of the code is linked on LTA's web page and posted several places on-line.

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