

# LAND PROTECTION TOOLS FOR LANDOWNERS

## GRAND TRAVERSE REGIONAL LAND CONSERVANCY

*Protecting Significant Natural, Scenic, and Farm Lands, and Advancing Stewardship, Now and For All Future Generations*

If you decide to protect your land with the Grand Traverse Regional Land Conservancy, there are several tools you can use. Depending on your property and goals, you may choose to either place a conservation easement on the property, sell or donate the property to the Conservancy, or work with the Conservancy to sell or donate the property to a government agency for public use.

### CONSERVATION EASEMENTS

#### What is a conservation easement?

A conservation easement is a voluntary legal agreement that permanently restricts the way land is used in order to protect its conservation values. Conservation easements can be used to protect a wide variety of land including working farms, working forests, wildlife habitat, properties that protect water quality and those with scenic views. The landowner and the Conservancy tailor the easement terms to protect the land's conservation values and to meet the needs of the landowner. Conservation easements are drafted in a detailed legal agreement that outlines the rights and restrictions on the uses of the property and the responsibilities of the landowner and the Conservancy. Conservation easements are usually donated to the Conservancy, though sometimes the Conservancy may choose to purchase a conservation easement.

*"The great thing about a conservation easement is that it allows us to use our land the way we want to use it. The only restrictions are those we imposed ourselves. I would recommend this to anyone."*

*- Al Hart, conservation easement donor*

#### How does a conservation easement work?

When you own land, you also own many rights associated with it. These property rights include the rights to harvest timber, build structures, grow crops, and so on, subject to zoning and other restrictions. When you grant a conservation easement to the Conservancy, you permanently give up some of those rights and retain other rights. For example, you might give up the right to build additional structures while retaining the right to grow crops or harvest timber. Future owners are also bound by the easement's terms, since the agreement is in perpetuity. The landowner retains ownership of the property and other associated rights, and the Conservancy enforces the easement through regular checks of the property.

#### A common misunderstanding about conservation easements:

The most common misunderstanding about conservation easements is the belief that they allow the public to access your property. This is not true – conservation easements do not require public access on your land.

## On what land does the GTRLC accept easements?

Most of the easements that the GTRLC accepts are on farmland, forestland, ecologically rich land and land with scenic value. In order for a donated easement to qualify for a tax deduction, however, it must meet certain criteria set by the IRS.

## How is a conservation easement valued?

The value of a conservation easement is determined by a third-party appraiser, who assesses the unrestricted fair market value of the property along with the restricted value. The difference between the two is the value of the conservation easement.

### EXAMPLE:

UNRESTRICTED VALUE (before easement)	\$ 1,000,000
RESTRICTED VALUE (after easement)	— \$ 600,000
CONSERVATION EASEMENT VALUE	\$ 400,000

## What are the allowable uses for land under conservation?

Because every property is different, the specific terms of each conservation easement are different. In general, landowners retain the right to hunt and fish, farm, harvest timber, maintain hiking trails, extract oil and gas and build structures that do not impact the land's conservation value. They also retain the right to sell or rent the property.

## How are conservation easements enforced?

When the Conservancy accepts a conservation easement, it takes on the legal responsibility to enforce the terms of the easement. The Conservancy will monitor easements by inspecting the property annually and maintaining open communication with the landowner. If the easement is violated – for example, by erecting a building that the easement doesn't allow – the Conservancy will take action to have the violation corrected, including legal action if necessary.

### The benefits of conservation easements:

- The property remains in the ownership of the landowner, who may continue to live on it, sell it, or pass it to heirs.
- Conservation easements may provide tax benefits, including a charitable donation deduction and potential property and estate tax benefits.
- They are permanent, guaranteeing protection when the land changes hands.

## Donating a Conservation Easement

Most landowners choose to donate a conservation easement in order to protect their property for their lifetime and for future generations, while also qualifying them for potential tax deductions.

## Selling a Conservation Easement

On certain high priority properties and when funds are available, the Conservancy may protect land by facilitating the purchase of the conservation easement, also known as a purchase of development rights (PDR). Instead of donating the conservation easement, landowners receive a cash payment for the easement. Often, when easements are purchased, the landowner receives a partial cash payment in combination with a partial donation, known as a bargain sale. Regardless of whether an easement is sold or donated, taxes on the land are assessed at the after-easement value.

## **SELLING OR DONATING LAND**

### **Donating Land**

Land donated to the Conservancy for conservation is one of the best legacies a person can leave to future generations. Our community can enjoy nature preserves today because of the foresight and generosity of the many landowners who have made gifts of their land. Most land donations meet federal tax code requirements and can qualify as a tax-deductible charitable donation.

#### Donating land is attractive to landowners:

- Whose land has significant conservation values and who do not have heirs, or whose heirs can't or won't protect it
- Who own property they no longer use
- Who own highly appreciated property and would be subject to high capital gains taxes
- Who have substantial real estate holdings and wish to reduce estate tax burdens
- Who would like to be relieved of the responsibility of managing and caring for land that they otherwise treasure
- Who wish to leave a legacy by preserving their land for future generations

### **Selling Land**

If the Conservancy has funds available, you may choose to sell your land to the Conservancy, which would function the same way as any other land sale.

### **Land Donation Versus Land Sale**

Donating land is a very generous act, but may not be as large of a financial sacrifice as one would expect. If you donate your land to a qualified organization, you can claim an income tax deduction equivalent to the land's current fair market value. If you sell land, you may incur a capital gains tax on the appreciated value of the property. Donating land will remove its value from your estate, reducing the estate taxes. Be sure to consult with a tax professional to understand what tax benefits you may qualify for.

### **Bargain Sale**

A bargain sale combines a traditional sale and a donation. In a bargain sale, landowners sell their land to the Conservancy for less than its fair market value. A bargain sale makes the land more affordable for the Conservancy to purchase and offers several benefits to the landowner: it provides some cash and may qualify the landowner for a charitable income tax deduction that often helps offset the capital gains tax. In this way, a bargain sale combines the income-producing benefit of a sale with the tax reducing benefit of a donation.

### **Community Assist Projects**

Often times, the Conservancy helps protect land that will ultimately be owned and managed by a government entity for public use. The Conservancy has partnered with many surrounding townships and counties, as well as the State of Michigan, assisting these entities with technical resources and knowledge, grant funding and landowner relations to help purchase land for public use. Contact the Conservancy to learn more about potential buyers or other opportunities for selling your property.

## OTHER TOOLS

**Life Estate:** A life estate allows you to donate your land to the Conservancy now, securing your gift during your lifetime, while allowing you to still reside on the property for the rest of your life.

**Option to Purchase:**

Sometimes a landowner is interested in selling their land to the Conservancy or a unit of government, but the funds to buy it aren't immediately available. The landowner might then grant the Conservancy the option to buy the property over a period of time or at a later date. Under the option, the landowner and the Conservancy contractually agree on a sale price, and the Conservancy is given a specified amount of time to exercise the option.

**Right of First Refusal:**

If you are not ready to commit to selling your land, you may still grant the Conservancy a "right of first refusal". This gives the Conservancy the "first right" to purchase the property before it can be sold to other potential buyers. The Conservancy is not obligated to purchase the property.

**Non-Conservation Land Donation:**

Sometimes the Conservancy accepts property that doesn't have conservation value. With the landowner's understanding, this land is then sold to raise funds for other Conservancy projects. These types of donations also qualify a landowner for many of the tax benefits described earlier.

### Gloria Whelan, Conservation Easement Donor

When Joe and Gloria Whelan first purchased their 179 acres on Oxbow Lake, few people lived around Mancelona. Nevertheless, Gloria and Joe were aware of how attractive it might one day be to a developer. "We looked across the lake and envisioned the opposite shoreline dotted with houses, and we decided we had to rescue it," Gloria recalled.

Gloria is confident that protecting their land with a conservation easement was the right thing to do, even though some people might argue that their land would be worth more if it could be developed. "I don't think that's true," said Gloria who has since sold the property. "Besides, even if you got 'full price' from the sale of developable land, what could you possibly buy with all that money that could ever give you more pleasure than this?"

**For More Information:**

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# WHAT TO EXPECT WHEN A CONSERVATION EASEMENT IS IN PLACE

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The Conservancy makes a commitment to perpetually uphold the restrictions of each conservation easement it accepts and thereby to protect the conservation values specific to each property. We work collaboratively with the landowner as a partner in protection of the property. We believe that strong relationships, transparency, and good communication are in the best interest of the land, landowner and the Conservancy.

As the holder of the conservation easement, the Conservancy conducts an annual monitoring visit of the property to ensure the rights and restrictions of the easement are being upheld. This visit also provides an opportunity for the landowner to discuss potential uses or structures with the Conservancy's staff, ask questions about the easement and review the easement provisions. The Conservancy encourages the landowner to meet with us and walk the



property during our visit. After the visit, a Conservancy staff member will write a monitoring report, which includes a brief description of the monitoring visit and identifies any changes made to the property. The landowner can expect to receive a copy of the report for their records after the monitoring visit. Landowners are always encouraged to call Conservancy staff throughout the year with any questions about their easement.



photo by Nate Richardson

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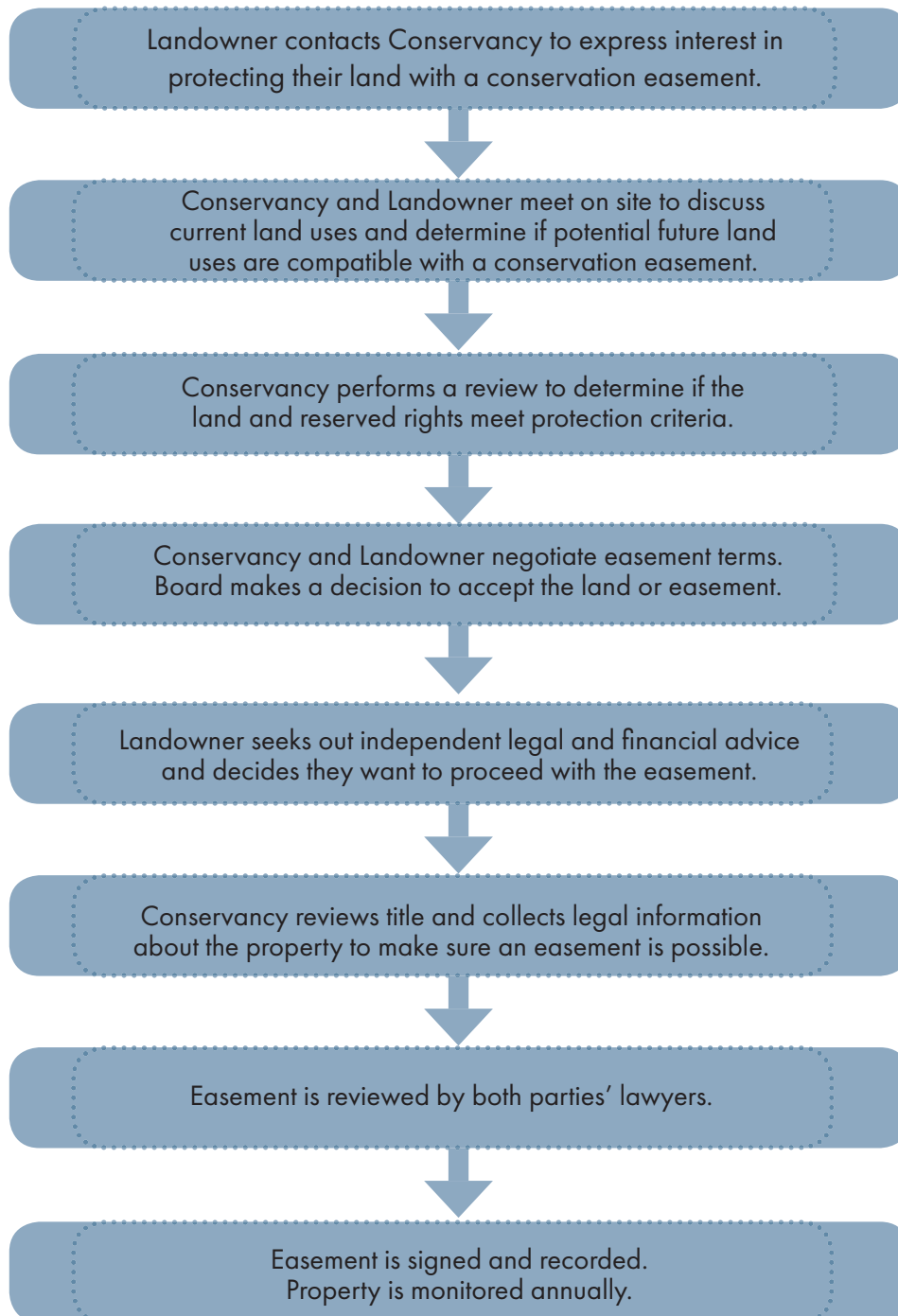
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# PUTTING LAND UNDER CONSERVATION EASEMENT

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# IRS REGULATIONS FOR CONSERVATION EASEMENTS

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When a landowner donates a conservation easement and wishes to claim a charitable income tax deduction for the donation, the conservation easement donation must meet certain IRS requirements: It must have a conservation purpose, it must be donated to a qualified conservation organization and the value of the donated easement must be determined by a qualified appraiser. It also must be perpetual and bind all future owners by its terms.

### **What is a conservation purpose?**

For a conservation easement to qualify for an income tax deduction, it must be found to have a “conservation purpose.” The IRS defines “conservation purpose” as one of the following:

- Protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem.
- Preservation of open space (including farmland and forest land) either for the scenic enjoyment of the general public or pursuant to a clearly delineated governmental conservation policy (both purposes must yield a significant public benefit).
- Preservation of land for outdoor recreation by, or for the education of, the general public.
- Preservation of a historically important land area or a certified historic structure.

### **What is a qualified organization?**

The IRS defines a qualified conservation organization as a governmental unit or a 501(c)(3) organization that meets specific IRS requirements.

### **Appraisal Regulations**

The IRS requires an appraisal from a qualified third-party appraiser for any non-cash gift with a value over \$5,000 given to a qualified organization. The appraisal must meet strict IRS requirements and must be conducted by a qualified appraiser. The Conservancy can provide a list of qualified local appraisers.

### **Baseline Documentation Report**

Before a conservation easement is accepted by the Conservancy, the IRS requires baseline documentation to be conducted on the property. The baseline report helps establish the initial condition of the property to help inform the Conservancy as they annually monitor the easement. The report includes a written description of the property, the natural characteristics of the property and the restrictions outlined in the conservation easement. The report typically includes photos, maps and a survey of the property. The Conservancy prepares this document on a landowner's behalf.

*The Conservancy does not provide tax or legal advice, and all tax and legal issues are ultimately the sole responsibility of the landowner. The information provided in this document is subject to change. Each property and each donor's situation is different; always consult with a tax professional and attorney for financial and legal advice.*

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