



# KETTLE MORAINE LAND TRUST

*Serving the Southern Kettle Moraine lakes area in Walworth County, Wisconsin*

## ***Conservation Easement Basics***

Conservation easements are the most traditional tool for conserving private land. A voluntary conservation easement is a set of restrictions that a landowner voluntarily places on their property to preserve their land's natural features, such as wildlife habitat or wetlands, or to protect open space, farmland or scenic views. The landowner grants the easement and the right to enforce it to a land trust, a tax-exempt charitable organization specializing in land conservation, or a government agency. Landowners continue to live on and own the land, and are able to sell it or pass it on to heirs.

In order to protect conservation values, certain restrictions on use of the property are detailed in the conservation easement, which is a legal, recorded document. The easement also states the rights the landowner reserves and continues to hold regarding use of the property. Conservation easements are perpetual; they apply to the current owner and all future landowners, permanently protecting the property. Future owners also will be bound by the easement's terms. It is the land trust's responsibility for making sure the terms of the conservation easement are followed by current and future landowners.

Conservation easements are tailored to each property and the landowner goals. An easement on property containing rare wildlife habitat might prohibit any development, for example, while an easement on a farm might allow continued farming and the addition of agricultural structures. An easement may apply to all or a portion of the property, and does not require public access.

A voluntary conservation easement can help a landowner pass land on intact to the next generation. Many landowners struggle to pass their family lands to their children or heirs because oftentimes the associated tax burdens are too great for the heirs to manage. By limiting the land's development potential, the easement lowers its market value, which in turn lowers estate tax.

If a conservation easement 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 appraised value with the easement and its value without the conservation easement in place.

## ***Conservation Easements and Tax Deductions***

Conservation easements are typically donated by the landowner. 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. Easement values vary greatly; in general, the highest easement values result from very restrictive conservation easements on tracts of developable open space under intense development pressure. In some jurisdictions, placing an easement on your property may also result in property tax savings.

### **Federal tax benefits of conservation easements**

The Internal Revenue Service (IRS) Code allows two principal forms of tax benefits from donations of conservation easements: a federal income tax deduction and an estate tax exclusion. The amount of the deduction or exclusion is determined by an appraiser who calculates the decrease in value caused by the permanent restrictions on the use of the land under the conservation easement. Only easements granted in perpetuity are eligible for the tax benefit.

### **Income tax benefits**

The IRS Code (Sec. 170 (h)) allows charitable gifts of qualified conservation contributions, which include the donation of land or the donation of a perpetual conservation easement. The donation must be made to a qualified organization exclusively for "conservation purposes" or a government agency. The Kettle Moraine Land Trust is a qualified organization. The code also specifically defines "conservation purposes." The regulations outline four such conservation purposes:

- preservation of land areas for outdoor recreation by, or the education of, the general public
- protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem
- preservation of certain open space (including farmland and forest land)
- preservation of historically important land or certified historic structure

An easement need only ensure one of the four conservation purposes. In order to qualify for the federal deduction, the value of the conservation easement must be determined by a qualified appraisal. In the most basic terms, the value of the easement is the difference between the land's value with the easement restrictions and its value without the easement. If a tract of land is valued at \$200,000 with the easement in place, and \$300,000 without easement restrictions, then the value of the easement is \$100,000.

The landowner donating an easement is permitted to take as an income deduction, up to 30 percent of their adjusted gross income in the year of the gift (10 percent for C corporations). If not exhausted the first year, the amount of any excess can be carried forward and used in the next 5 subsequent years subject to the same annual 30% limitation. **For example:** *Using the appraised value of the easement above, an individual with an adjusted gross income of \$70,000 per year could deduct \$21,000 from their adjusted gross income (30% of \$70,000) in the year the easement was donated. The remaining amount of \$79,000 can be deducted over the next 5 years.*

### **Reducing Estate Taxes**

Perhaps the most important benefit, a conservation easement can be essential for passing undeveloped land on to the next generation. By removing the land's development potential, the easement typically lowers the property's market value, which in turn lowers potential estate tax.

Heirs to large tracts of open space, farms, natural areas, and/or timberland face substantial estate taxes. Estate tax is levied on a property's "highest and best use" which is usually the amount a developer or speculator would pay. The resulting tax burden can be so large that an heir must sell their property in order to pay taxes. Estate taxes may be reduced through a conservation easement because the restrictions in the agreement may reduce the market value of the property. A conservation

easement can be donated in a will and the appraised value of the gift may be deducted from the taxable estate.

In certain circumstances, federal tax law also allows for a 40% reduction in the remaining value of the land covered by an easement, when that easement was donated to a qualified organization such as the Kettle Moraine Land Trust. The exclusion is capped at \$500,000. The easement may be given by a landowner who has owned his land for at least three years, by a family member, or the executor of the estate of such a landowner. You should consult your tax advisor about these potential advantages.

**Wisconsin Property Tax Benefits:**

Local real property tax assessments are based on a property's full-market value, which may take into consideration the property's development potential. If a conservation easement reduces or removes this potential, the level of assessment and the amount of real 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.

To learn more about protecting your land with a voluntary conservation easement, call Maggie Zoellner, KMLT Program Manager, 262-949-7211, [maggie@kmlandtrust.org](mailto:maggie@kmlandtrust.org)



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### ***Basic Steps for Donating a Conservation Easement***

1. Landowner and Kettle Moraine Land Trust representative(s) meet to discuss landowner's wishes, needs and conservation objectives. The KMLT representative describes its policies, and explains how a conservation easement works, appropriateness for the property, and any other conservation options that may be available to the landowner
2. Landowner reviews the material, consults with family members, legal counsel, and/or tax advisors, and indicates an interest in further exploration of an easement.
3. KMLT representative visits the property to evaluate its features and the natural and open-space resources, and consults again with the owner on the easement terms and the long-term objectives. The KMLT representative determines whether protection of the property serves the public interest and, (if donated), which of the four IRS public benefit tests is satisfied. KMLT documents the resource values of the property and presents its findings to KMLT's Stewardship Committee for review and approval to proceed.
4. The KMLT Board of Directors approves pursuing the conservation easement, and a memorandum of understanding is executed between the landowner and KMLT defining each parties responsibilities.
5. Landowner provides chain of title, certification of title or title report to the land trust.
6. The landowner contacts the lender, if any, to arrange for subordination of mortgage. The mortgage must be subordinated so that the conservation easement is foremost in the property title. This way the easement can be effective and (if donated) for a tax deduction to be available.
7. Landowner determines if certain IRS requirements for an easement to be tax deductible are met. A report known as a Baseline Report, documenting the property's conservation values is created and includes maps and photographs of the property.
8. Conservation easement is finalized and both the easement and the Baseline Report are signed.
9. The signed documents are recorded at the county courthouse.
10. Kettle Moraine Land Trust asks conservation easement donors to make a donation to the land trust to cover the costs of monitoring and enforcing the conservation easement in perpetuity.
11. If the landowner intends to take a qualified tax deduction or claim a credit for the non-cash charitable gift, the landowner is responsible for hiring an independent appraiser to determine the value of the gift within 60 days of the easement's execution.
12. The landowner claims a federal income tax deduction for the donation on a special form with his or her income tax return (Form 8283). It is the policy of Kettle Moraine Land Trust to review the landowner's appraisal before signing Form 8283.
13. The Trust has the responsibility of monitoring the property at least once per year to ensure that all of the easement conditions are met.

**As a donor, whether considering a donation of land or a conservation easement, there are many federal tax regulations you must follow to ensure proper credit for a charitable gift. The Kettle Moraine Land Trust works diligently to see that every charitable gift of land or easements meets federal and state tax law requirements, but ultimately it is the donor's responsibility to ensure that these requirements are met.**