What is a Conservation Easement?
For landowners who want to conserve their land and yet keep it in private ownership and use, a conservation easement may be the best solution. A conservation easement is a legal agreement between a landowner and the Land Conservancy that limits a property’s uses and development in order to conserve its natural, agricultural, and/or scenic values.

This voluntary agreement between a landowner and the Land Conservancy is permanent and applies to all future owners, whether they inherit or purchase the property. The land stays in private ownership and the conservation easement simply gives the Land Conservancy the right to ensure that the natural characteristics of the land are protected, as outlined in the agreement.

Land preserved with a conservation easement benefits the public by conserving natural habitats and scenic views. To encourage the use of these easements, federal and state tax incentives were created for qualified conservation easement donations.

Creating a conservation easement does not mean that the land is opened up to the public. Most easement donors want to maintain their privacy and therefore do not allow public access to their property. If the easement donor or a future landowner wants to permit full or limited access by the public they may do so, but it is not required.

Conserving Land by Limiting Uses
Conservation easements preserve natural and agricultural land by limiting future uses that could destroy or degrade these resources. Each conservation easement is written to reflect the unique characteristics of a property and the resources that are to be protected as well as the landowner’s current uses and goals for the property.

Most conservation easements limit future residential development and land division because both usually have a negative impact on natural habitats. Other development activities that would significantly alter the landscape and habitats, such as road building and mining, are also limited. Most conservation easements designate a residential area that is largely free of restrictions, and easements generally allow farming and habitat management activities to continue.

Is a conservation easement right for your land?
Please contact the Land Conservancy of West Michigan’s land protection staff at 616-451-9476 or email at lcwm@naturenearby.org and we will help you determine the best conservation option for your land.
Protecting Private Property Rights

Some landowners are concerned that if they create a conservation easement they will turn over all their rights to manage and use the property to the Land Conservancy. This is not true. In fact, all that is transferred to the Land Conservancy is the right to enforce the restrictions outlined in the conservation easement. The Land Conservancy does not become an owner of the land.

The Land Conservancy annually monitors the property to make sure that the terms of the easement are being followed, but it has no other management responsibilities and exercises no direct control over unrestricted activities on the land.

Similarly, the Land Conservancy has only a limited right to enter the property – to meet the monitoring requirements and to prevent a violation of the easement’s terms. It is the Land Conservancy’s policy to make every effort to get permission from the landowner before entering the property.

A Long-Term Commitment to Conservation

The conservation easements held by the Land Conservancy are "perpetual" – they last forever. If the Land Conservancy discovers a problem and believes the terms of the easement are not being followed, the Land Conservancy will take whatever steps are necessary to uphold the terms of the easement.

Although the Land Conservancy has a right to take legal action against violators, it is our policy to make every effort to first work cooperatively with the landowner to fully understand the nature of the problem, to stop any further destruction of the protected resources, to have damaged resources restored, and to ensure that the problem doesn’t continue in the future.

Property that Qualifies for a Conservation Easement

To qualify for federal and state tax incentives a conservation easement donation must be voluntarily created by the landowner, it must be given to a qualified charitable organization such as the Land Conservancy of West Michigan, and the easement must be of significant conservation value as defined by the federal government. Easements that meet this “conservation purposes” test will do one or more of the following:

- protect natural habitat for wildlife,
- preserve open space that contributes to the goals of a government program,
- preserve recognized scenic views for the public,
- preserve important farmland or forestland,
- or preserve public land for outdoor recreation and education.

If other parties hold a legal interest in the property that would affect the permanence of the easement or the resources that are being protected, including mortgages or surface mineral rights, these interests must be subordinated to the conservation easement. Finally, the conservation easement must be perpetual, or permanent.

The Land Conservancy prefers conservation easements that preserve at least 10 acres in urban areas and 30 acres in rural areas. Smaller parcels may be considered if they are adjacent to other conserved lands, if they contribute to one of the Land Conservancy’s priority protection goals, or if they have significant ecological features.

At the invitation of the landowner, Land Conservancy staff will evaluate a property to determine if it meets the Land Conservancy’s criteria for a conservation easement, or if it is more suited to another method of conservation.
Financial Benefits of Creating a Conservation Easement
There are federal income tax benefits to creating and donating a conservation easement. Together with Michigan Public Act 446 (see pg. 4), which doesn’t allow the “pop-up tax” to occur upon transfer of the property, there are both income and property tax benefits to conservation easements. The federal income tax benefits available are described below:

Federal Income Tax Benefits:
- The donation of a conservation easement allows the donor to take the donation against 50% of their adjusted gross income (AGI);
- Secondly, the donation can be “carried forward” for up to 15 additional years—16 years in total.
- Farmers and ranchers may be able to take the donation against 100% of their AGI if more than half of AGI comes from farming and ranching activities.

Determining the Value of a Conservation Easement for Federal Tax Purposes:
An independent appraisal done to IRS standards determines the value of a conservation easement for a donor’s tax deduction purposes. The Land Conservancy can provide a list of appraisers in the area that meet IRS qualifications and who have experience in conservation easement appraisals. We can also provide information to other qualified appraisers who haven’t previously worked on a conservation easement.

To value a conservation easement, the appraiser must first determine the “before” value of the property – its unrestricted fair market value. Then the appraiser will determine the “after” value of the easement property – how its value is affected by the restrictions imposed by the conservation easement agreement. The difference between these two values is the value of the conservation easement. (An example is shown on the last page.)

If valuable development rights are restricted, such as upland residential sites in a desirable residential area with good access to roads and utilities, the donation value of a conservation easement may be much greater than if the conservation easement only places limits on land that is not easily developed, such as wetlands and steep dunes.

Reed Family Conservation Easement
For many years the Reed family has carefully managed their property on the Pere Marquette River to improve the quality of the wildlife habitat. In addition to hunting the property, they value the land as a place for family gatherings - where kids can learn through outdoor adventures and where the talented photographers in their family can practice their art.

When they learned about conservation easements they could see that it was a way to ensure that their land would never be turned into a riverside subdivision and that it would make it much easier for their heirs to keep the land in the family.

The Reed’s conservation easement allows them to continue wildlife habitat enhancement projects, to lease agricultural fields to neighbors, and to allow future generations to build another cottage along the mile-long stretch of river that they own. The majority of the property will remain free of development, helping to preserve the natural Pere Marquette River corridor that is home to a diversity of wildlife.
Making “Cents” of Conservation Easements

**Michigan Property Tax Benefits**
Under current Michigan law, the taxable value of a property is capped and may not increase from one year to the next by more than 5% or the increase in the consumer price index, whichever is lower, until there is a transfer of ownership.

This property tax cap means that the assessed value of land held for many years by a landowner is often far less than its fair market value.

When the property is sold or transferred to anyone who is not a first-degree blood relative, the assessor is directed to reassess the property so that the parcel’s taxable value is equal to its state equalized value.

As a result of this increased assessment, property taxes for the new owner usually “pop-up”. This can be a huge burden on new owners and may hinder the sale or transfer of the land.

**Michigan Public Act 446 of 2006 eliminates the “pop-up” of property tax on the transfer of lands with a conservation easement, no matter who the next owner is.** (Residences and buildings on the property are still subject to reassessment to the current SEV.) In this way, PA 446 gives protected conservation property the same tax treatment as protected farmland.

Creating a conservation easement in Michigan unfortunately does not necessarily mean that property taxes will be reduced, even though an independent appraisal may demonstrate a reduction in the property’s value.

Assessors were directed by the Tax Tribunal and the Department of Treasury to “consider” the reduction in a property’s value caused by a conservation easement when establishing its assessed value, but they are not *required* to lower property taxes. The owner of the property would have to apply to his or her local township in order to request a reduction in property taxes.

**Estate Tax Benefits and Donating a Conservation Easement though a Will**

Conservation easements may reduce a landowner’s estate tax if the donation of the easement reduces the value of the property. A landowner can donate an easement through a will, or the heirs may create an easement after a landowner’s death. The value of the easement may then be deducted from the deceased’s taxable estate.

The Taxpayer Relief Act of 1997 greatly increased the estate tax benefits of a conservation easement. The law allows the exclusion for estate tax considerations of 40% of the value of land subject to a conservation easement, up to $500,000 per estate. This exclusion is in addition to the appraised value of the conservation easement.

It is always a good idea to contact the Land Conservancy before donating a conservation easement through a will. This ensures that the Land Conservancy can accept the proposed conservation easement and that it will be possible to achieve the landowner’s goals.

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**Please consult your financial advisor!** If you are considering donating a conservation easement you should be aware that your actual tax savings would be a function of your income tax bracket and whether or not you have other charitable deductions. *To determine how a conservation easement donation would affect your taxes you need to consult your own professional tax and/or legal advisor. The Land Conservancy does not claim to give legal or tax advice about the consequences of a particular conservation easement donation.*
Making “Cents” of Conservation Easements

Costs to Create a Conservation Easement

Appraisal
A landowner seeking a federal income tax deduction for the donation of a conservation easement must provide a qualified appraisal. The IRS requires a specific kind of appraisal that uses a “before and after” evaluation method and a full discussion of the valuation method. At this time, we are generally seeing prices for this kind of appraisal ranging between $5,000 and $8,000, depending on the size and complexity of the easement and the property. Some of this cost may be deductible as a tax planning expense on a donor’s federal income tax return.

Title Work
The Land Conservancy requires a review of the property’s title for all conservation easement properties. Title work generally costs about a few hundred dollars. In rare cases, more costly title insurance may be necessary.

Survey
The Land Conservancy requires that the boundaries of a conservation easement property can be easily located by representatives of the Land Conservancy responsible for easement monitoring. A survey of an easement property’s boundary and any residential areas may be required. A survey isn’t required if the boundaries are readily found.

Tax and Legal Advice
The Land Conservancy of West Michigan cannot represent the landowner’s interests in legal or tax matters. We strongly encourage landowners to get professional advice in these areas.

Conservation Easement Stewardship Fund
In accepting a conservation easement, the Land Conservancy makes a commitment to do whatever is necessary to uphold the terms of the easement. To ensure that the organization can fulfill its responsibility to legally defend, steward, and manage the conservation easement, the Conservancy has established the Conservation Easement Stewardship Fund.

All easement donors are asked to consider making a financial contribution to the Conservancy’s Easement Stewardship Fund, which would be considered a tax-deductible donation to the full extent of the law. The Land Conservancy uses a “calculator” or worksheet to help determine how much it will cost the organization to hold the conservation easement over time.

The property’s size, location, and the number of reserved rights in the conservation easement factor into the recommended contribution.

Most landowners see that their conservation goals are more likely to be sustained if they can contribute to the easement’s future protection. Contributions to the Fund can be made through a one-time donation, over a number of years, or through a will or estate.

Photos (left & above): Jim
The DeYoungs own and live on a 90-acre property. They have a house and outbuildings, but most of the property is natural and undeveloped, with fields, woods, and wetlands. Without a conservation easement their property will likely become a residential subdivision in the future.

Using the “before and after” method for evaluating a conservation easement, an appraiser determines that the fair market value of their property, unrestricted, is $650,000.

The DeYoung’s conservation easement will prohibit further land division and home construction. An appraiser determines that removing this development potential reduces the value of the property to $330,000. Therefore, the value of their conservation easement is $320,000:

Unrestricted property: $650,000
Property restricted with easement: $330,000
Value of Conservation Easement: $320,000

The DeYoungs donate the conservation easement to the Land Conservancy of West Michigan (a qualified conservation organization) and deduct the value of the gift the year the gift is made, up to 50% of their adjusted gross income. Any amount of the charitable donation remaining after the first year can be carried forward and deducted against income (within the 50% limit) for 15 additional years.

In this example, assume that the DeYoung’s adjusted gross income is $80,000 and it remains constant. If they donate a conservation easement valued at $320,000 to the Land Conservancy and they claim no other charitable deductions, they can deduct $40,000 from their income tax the year the gift is made (50% of $80,000) and do the same for the 7 following years until they’ve used all of the donated easement’s value ($40,000 x 8 = $320,000).

The actual tax savings the DeYoungs would realize as a result of their easement gift is a function of their income tax bracket. In this example, if the DeYoungs were in the 25% tax bracket the enhanced conservation easement tax deduction would allow them to apply their tax rate to $40,000 of income instead of $80,000, resulting in an actual tax savings of $10,000 in the first year and $80,000 over eight years:

<table>
<thead>
<tr>
<th>Calculations</th>
<th>Previous Tax Benefits</th>
<th>New Enhanced Benefits</th>
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<tbody>
<tr>
<td>Adjusted Gross Income (AGI)</td>
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<tr>
<td>Value of Conservation Easement</td>
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<td>$320,000</td>
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<tr>
<td>Annual limit on Charitable Contribution</td>
<td>30% of AGI = $24,000</td>
<td>50% of AGI = $40,000</td>
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<tr>
<td>Contribution Deduction Years 1-6, each year</td>
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<td>$40,000</td>
</tr>
<tr>
<td>Contribution Deduction Years 7-8, each year</td>
<td>Not allowed</td>
<td>$40,000</td>
</tr>
<tr>
<td>Contribution Deduction Years 9-16, each year</td>
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<tr>
<td>Total Deduction</td>
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<tr>
<td>Actual Tax Savings (25% tax bracket)</td>
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</tbody>
</table>

Additional Tax Savings Under New Benefits = $44,000