Conservation Easements: Questions and Answers

What Is a Conservation Easement?

A conservation easement is a voluntary and legally binding agreement between a landowner and a 501c3 nonprofit conservation entity ("land trust") or government resource agency. The conservation easement runs permanently with the property and not with the owner so when the property changes ownership, the conservation easement remains in place.

When owners donate or sell a conservation easement to a land trust or public agency, they are removing some of the rights associated with the property. These rights are effectively "extinguished" except for any affirmative rights the owner grants to the land trust. The conservation easement permanently limits uses of the property to protect its identified conservation values.

Conservation easements offer landowners flexibility in protecting their property. Landowners who want to keep their property "forever wild" could limit all significant development. An agricultural conservation easement might allow continued farming, one additional future residential use and additional agricultural structures, and some limited woodlot harvesting. An easement on a forested property might allow continued residential use but restrict what

happens to the forested area so that it continues to provide conservation benefits. There are many variations with what is permitted and prohibited in conservation easement. The key requirement is that the conservation easement continues to protect important conservation values. Both the land trust and the landowner must mutually agree to the conservation easement.

The Land Trust is responsible for making sure that the current and all future landowners adhere to the conservation purpose and terms of the easement. An easement may apply to all or a significant portion of a property, depending on where development and the conservation values are located. It may, or may not, allow for public access to the property. A landowner who has donated a conservation easement can sell the land or pass it on to heirs. Future owners of the property are bound by the terms of the easement.

Another way to visualize a conservation easement is to think of owning land as holding a bundle of sticks. Each of the sticks represents a landowners' right to legally do something with their property. A landowner's property rights may include the right to subdivide, build houses and other structures, harvest timber, farm, allow hunting or grant public access. Landowners may give up or modify certain development rights associated with their property through a conservation easement.

Landowners who donate all or a portion of the market value of a conservation easement can apply for federal income tax relief. But there are numerous requirements that need to be met for the donation to meet IRS purposes. See below.

Property owners who sell or donate a conservation easement retain ownership and use of the land but relinquish certain rights to use the property. The Land Trust's interest in the property is to ensure the terms and conditions are met, regardless of who owns the land.

How long does a conservation easement last?

Conservation easements "run with the land," binding the original owner and all subsequent owners to the easement's terms. The easement is recorded at the county so that all future owners and lenders will learn about the restrictions when they obtain title reports.

What are the financial benefits of donating a conservation easement?

If the easement is donated and 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 under Internal Revenue System (IRS) rules. The amount of the donation is the difference between the market value of the property at the time of donation and the market value with the easement in place. Granting an easement to a qualified organization that qualifies under the Internal Revenue Code as a "public charity" - which nearly all land trusts do - can yield federal income tax savings.

In December of 2015, Congress made permanent a federal tax incentive for conservation easement donations. In summary this incentive:

- Raises the deduction a donor can take for donating a conservation easement from 30 percent of their income in any year to 50 percent;
- Allows qualifying farmers and ranchers to deduct up to 100 percent of their income; and
- Extends the carry-forward period for a donor to take a tax deduction from a total of 6 years to a total of 16 years.

A conservation easement also can be essential for passing property on to the next generation. By removing some of its development potential, the easement lowers the market value of the property which in turn can lower estate taxes. In addition, a property with a conservation easement on it (whether purchased or donated) can qualify an estate to further reduce the market value of the property by 40 percent of its market value at the time of death or $500,000, whichever is less. Easements can sometimes make a critical difference in heirs' ability to keep the inherited property rather than sell it.

Placing an easement on your property may or may not result in property tax savings. Under Washington law, county assessors must take a conservation easement into consideration in establishing the market value of the land subject to the easement. However, existing tax basis, assessed value and current zoning of each piece of property are important factors in determining the potential benefits of any easement. The exact terms of each individual easement also have a bearing on its effect on property taxes.

If a property is in a qualified current use taxation program, it may have little effect on property taxes. Island County has three current use tax programs: (1) agricultural; (2) designated forest; and public benefit rating system (PBRS). If the property is not in a current use tax classification, there is a high likelihood that lower property taxes will result. In this case, the owner would need to apply for the designation. A property owner that does not have farmland and/or does not want to harvest their trees, may be a good fit for PBRS. The amount of the property taxes depends on the resource values, whether there is a conservation easement protecting the property and whether some kind of public use is allowed. Owners can achieve up to a 90 percent reduction in their taxes if they have a significant resource (agricultural soils, forest, wetland, etc.), have a conservation easement that protects the conservation values and allows some kind of public aspect. Less points are awarded depending on the owner’s desires.

The Washington State Department of Revenue requires the Island County Assessor to ensure every property in the current use tax classification complies with state law. Many properties no

longer qualify because they are not producing enough agricultural revenue or the owner is not commercially harvesting its timber.

If the property is already in an agriculture or designated forest current use tax classification and the use of the property then no longer qualifies for the programs, a conservation easement can be beneficial in moving the property into the PBRS program. In this case, the landowner is not penalized for back taxes and interest of they move out of one of the three programs and into another.

Why do people grant conservation easements?

People grant conservation easements because they love the conservation values of their property and want to protect them from unwanted development in the future. By granting a conservation easement, a landowner can ensure their property is permanently protected, regardless of who owns the land in the future. An additional benefit of granting a conservation easement is that the donation of a conservation easement may provide significant financial advantages to the donor. Owners may also want to be part of passing on a natural legacy to future generations, including mitigating climate change, ensuring clean drinking, protecting habitat for fish and wildlife, retaining the use of prime farm soils for safe, local food, protecting scenic views, and all of the other many public benefits of open space.

What activities are allowed on land protected by an easement?

The activities allowed by a conservation easement depend on the landowner's wishes and the characteristics of the property, including its conservation values. In some instances, no further development is allowed on the land. In other circumstances, some additional development is allowed but the amount and type of development may be somewhat restricted. Every conservation easement is unique, tailored to a particular landowner's goals and to their land.

Are conservation easements popular?

They are popular. Owners have found that conservation easements can be flexible tools that provide a permanent guarantee that their property will not ever be developed in a way that they would not want. Conservation easements are used to protect all types of land, including coastlines, forests, scenic views, streams and wetlands, wildlife habitat and/or corridors, and working forests and farms.

Can a conservation easement be tailored to my needs and wishes?

An easement restricts development to the degree that is necessary to protect the significant conservation values of that particular property. The Land Trust, working closely with the landowner, writes a conservation easement that reflect both the landowner's desires and the need to protect conservation values.

Can the landowner still sell or gift the property?

The landowner continues to own and manage the property after conveying a conservation easement to a Land Trust. Therefore, the owner can still sell, gift or lease the property. However, as stated above, all future owners assuming ownership of the property are subject to the terms and conditions of the conservation easement.

Do conservation easements require public access?

The public does not have access to a property protected by a conservation easement unless the landowner specifically allows it. For example, some owners allow the land trust to develop, manage and insure a trail located in a designated location so that the trail does not adversely impact their privacy. In this case, the trail is not a public access trail but rather a land trust trail that is open to public use under specified conditions.

What are a Land Trust's responsibilities regarding conservation easements?

Conveying a conservation easement requires developing a good working relationship with a land trust. After talking to the owner about their objectives and discussing the land trust's conservation objectives, the land trust will draft the conservation easement for the owner's review. An owner should allow sufficient time for the entire process. Owners are strongly advised to involve their families and seek guidance from an attorney familiar with conservation easements in their review of the draft easement.

As part of the easement transaction with the owner, the Land Trust also develops a Baseline Documentation Report that establishes the conditions on the property at the time the easement is donated. Both the land trust and the owner sign this document to acknowledge

the report is an accurate representation. The Baseline Documentation Report is updated by the land trust to note new permitted improvements or other changed conditions over time.

If the owner is seeking an IRS income tax deduction for the gift of the easement, they will need to secure a qualified appraisal to determine the gift amount. This can be somewhat costly. Prior to signing the IRS Form 8283, the Land Trust will need to receive a copy of the owner's appraisal to ensure the appraisal value finding is reasonable. This is to help prevent fraudulent appraisals from going forward to the IRS.

The Land Trust is responsible for ensuring owner's compliance with the restrictions that the easement document spells out. Therefore, the land trust monitors the property on an annual basis to confirm that the property remains in the condition prescribed by the easement document. The land trust maintains written records of its monitoring visits and encourages the landowner to stay in communication if they have any questions or concerns.

If the easement has been breached, the land trust will take whatever appropriate steps are necessary to ensure the purpose and terms of the conservation easement are upheld. Because of this obligation, Land Trusts asks all easement donors and sellers to donate a designated amount of money with the transfer of the conservation easement for the long-term monitoring and enforcement of every easement the Land Trust receives. The Whidbey Camano Land Trust also purchases legal defense insurance for every conservation easement and fee property that it holds to ensure permanency of these conservation lands.

Who holds the conservation easement?

To qualify for a tax deduction, a conservation easement must be donated to the government or a qualifying conservation organization. The Whidbey Camano Land Trust qualifies as a federally-recognized public charity under Internal Revenue Code Section 501(c)(3). In addition, the Land Trust is qualified to receive conservation easements under Washington State law.

Who owns and manages land protected by a conservation easement?

The landowner retains full rights to control and manage their property and they continue to bear all costs and liabilities related to ownership and maintenance of the property. The Land Trust monitors the property to ensure compliance with the easement's terms but generally has no other management responsibilities.

Does the conservation easement cover all of the landowner's property?

No, some easements only cover a portion of the landowner's property. Again, it depends on the landowner's wishes and the land trust's conservation objectives. For example, an owner of 100 acres, of which 80 acres are wetlands, forest or wildlife habitat, might decide to place a conservation easement just on the 80 acres. In that case, the remaining 20 acres would not be covered or affected by the conservation easement. For most conservation easements, the entire property ownership is included with existing and future development areas located within a specified building envelope to conserve the conservation values of the property.

What kind of lands are eligible for conservation easement protection?

The property have "significant" conservation values. This includes such things as forests, farms, wetlands, endangered species habitat, public outdoor recreation, beaches or scenic areas. The Land Trust has its own criteria for accepting conservation easements. Once a landowner decides it wants to pursue a conservation easement transaction, the Whidbey Camano Land Trust's Project Evaluation Committee will visit the property to evaluate it and make a recommendation to the Board of Directors on whether to have staff proceed on the project.

What rights does the Easement Holder have to my property?

If the land trust or another qualified organization accepts a conservation easement, it is obligated in perpetuity 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. Unless specifically addressed in the easement, the organization does not have the right to use your property. However, as mentioned, the Whidbey Camano Land Trust sometimes holds an affirmative right to develop a trail easement. However, this is discussed early in the process with a prospective landowner and, as mentioned above, is not necessarily required.