



CONSERVATION EASEMENTS

Protection In Perpetuity

*When we see land
as a community to
which we belong, we
may begin to use it
with love and respect.*

- Aldo Leopold





Ducks Unlimited conserves, restores, and manages wetlands and associated habitats for North America's waterfowl. These habitats also benefit other wildlife and people.

Private landowners control the vast majority of undeveloped land in the United States. Unfortunately, many landowners are under financial pressure from taxes and the encroaching sprawl of development. Landowners are looking for a way to protect their land and way of life for future generations, but also to continue to use the land for their own benefit. Conservation easements are being used as a planning option at a dramatically increasing rate. Landowners are increasingly using conservation easements to protect property in its natural state and to possibly benefit from available tax savings.

Ducks Unlimited, Inc., is dedicated to the conservation of wetlands, waterfowl, and other wildlife. Begun in 1937 by a group of visionary sportsmen who shared a common cause, DU has since conserved more than 13.5 million acres of wetlands and wildlife habitat. The organization is a non-profit charitable corporation funded through the donations of over 1.1 million supporters from across the globe. DU is further enhanced by the dedication of over 60,000 volunteers who spend countless hours of their time in support of DU's efforts. Ducks Unlimited's conservation message reaches untold numbers of people each day through various media outlets including a bi-monthly magazine, Ducks Unlimited TV, social media forums, and its website at www.ducks.org.



**CONSERVATION EASEMENTS ARE BEING USED
AS A PLANNING OPTION AT A DRAMATICALLY
INCREASING RATE.**

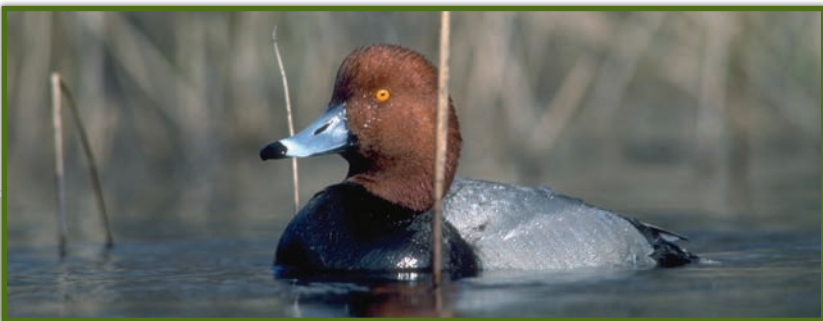
As the global leader in wetlands conservation, DU looks beyond the present and focuses its efforts on goals that will provide long-term benefits for wildlife habitat. DU works throughout North America and other parts of Latin America with its sister organizations DU Canada and DU Mexico to protect vast landscapes for some 900 species of wildlife. Ducks Unlimited projects not only provide a benefit to wildlife, but also foster a healthier environment for humans by providing cleaner air and water.

Q A What is an easement?

The dictionary defines an easement as an interest or right which one person has in the land of another. Ownership of land can be thought of as a bundle of rights to that land. The owner can transfer away some or all of those rights. The owner may transfer his or her interest in rights such as water, development, or timber and still own the land to which those rights are attached.

Q A What is a conservation easement?

A conservation easement is a legal agreement between a property owner (donor) and a qualified conservation organization or public agency (holder) in which the owner voluntarily agrees to restrict the type and amount of development that may take place on his or her property. A conservation easement is a way to protect property that has a conservation or historic value while keeping the property in its natural and undeveloped state and still maintaining ownership of the property. The owner also keeps the right to use the property for economic gain or recreation and the right to sell or deed the property to another. A donation of a conservation easement also may reduce estate, income, and property taxes.



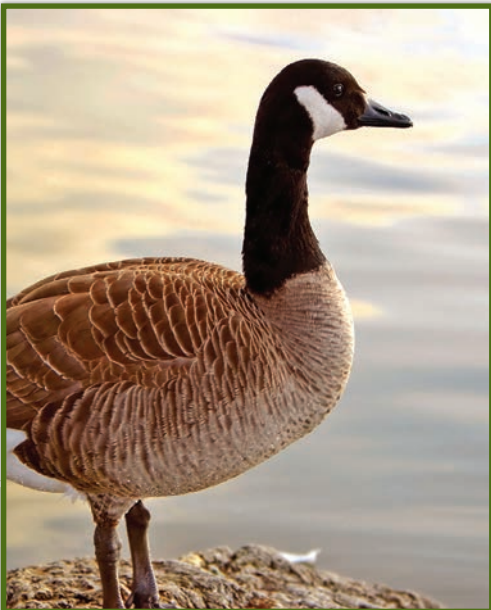
Q A

What kind of properties qualify for a conservation easement?

As a general rule, a conservation easement must have a valid conservation purpose. A guide is provided by the Internal Revenue Code Section 170(h)(4)(A), which defines valid conservation purposes as:

1. The preservation of land areas for outdoor recreation by, or the education of, the general public;
2. The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem;
3. The preservation of open space (including farmland and forest land) where such preservation is -

- 1. For the scenic enjoyment of the general public, or*
- 2. Pursuant to a clearly delineated federal, State, or local government conservation policy, and will yield a significant public benefit, or*
- 3. The preservation of a historically important land area or certified historic structure.*



**A PROPERTY MUST HAVE
SIGNIFICANT RESOURCES
AND CONSERVATION VALUE
PERTINENT TO DU'S
MISSION TO BE CONSIDERED
FOR AN EASEMENT TO
DUCKS UNLIMITED.**

Preserving a Piece of Waterfowl History

What began as one man's dream has developed into a waterfowl legend. It all began in 1940 when Wallace Claypool purchased 3,500 acres in northeast Arkansas near the small town of Weiner and began construction of the Wild Acres Farm reservoir. Wild Acres Farm was managed for agriculture and to provide waterfowl and wetland wildlife habitat in northeast Arkansas, a part of the world that was undergoing major changes. Vast areas of this portion of the Delta were being converted to agriculture and Wild Acres Farm and Wallace's reservoir served as a reminder of times passed. The farm was managed for high quality waterfowl habitat and annually wintered upwards of 500,000 mallards.

Claypool's Reservoir gained its true "claim to fame" on December 23, 1956 at 3:14 p.m. Central Standard time when 4 million viewers saw NBC's "Wide Wide World" televise its first live duck hunt with approximately 300,000 wild mallards before the camera. In 1966 at age 81, Mr. Claypool sold his beloved reservoir to some good friends from Memphis, Tennessee. On a photo of Claypool Reservoir that hangs in the present day clubhouse, Wallace wrote, "To my friends and successors, Bayard Boyle, Snowden Boyle, Toof Brown and Norfleet Turner, I entrust the fulfillment of my life's work, Wild Acres and its ducks." The subsequent owners of this amazing property truly fulfilled Wallace's dream of protecting his life's work when they entrusted long-term protection of Claypool to Ducks Unlimited's Wetlands America Trust through a perpetual conservation easement. Through Ducks Unlimited, this piece of waterfowling history known as Claypool Reservoir will be preserved forever.





How long does a conservation easement last?

An easement may be granted for a term of years or in perpetuity. However, in order for a landowner to take advantage of the tax benefits of a donated easement, it must be given in perpetuity.



What is contained in the easement document?

The conservation easement document contains a series of restrictions relating to the use of the land. The owner transfers, by deed of conservation easement to DU, certain rights which will protect the property in the future. The owner initially gives up development and use rights to the property, but then reserves the rights they specifically desire and need to farm, ranch, hunt, etc. The document is recorded on the Land Records of the Town or County where the property is located. This way, the easement is attached to the land by the records and “runs with the land.” In other words, all subsequent owners of the property, or anyone who obtains an interest in the property, purchases it subject to the terms of the easement.





What restrictions are contained in a conservation easement?

An easement is tailored to fit the particular property based on the desires of the owner and the goals of the conservation group. The only rule is that all restrictions must be consistent with the applicable laws. Typical restrictions eliminate commercial and industrial uses and mining, limit subdivision, roads, homes, other structures, and design timber cutting according to best management practices. An easement might prohibit all future development, commonly called a “forever wild” easement. An easement might preserve the land for historic or educational use, or allow a certain amount of development that will not damage the natural value, but help the owner gain economic benefit.

For example, Mr. Smith owns a 2,000-acre ranch. He wants to donate a conservation easement but has certain needs for his family and ranch business. Mr. Smith donates an easement that prohibits future development, but he reserves the right to subdivide two lots, one for each child on a specified portion of the ranch, and to build additional feeding structures and storage buildings for the ranching operation. He also reserves the right for himself and family to hunt and fish the property. Mr. Smith has protected his land but also reserved the rights necessary to continue his ranching operation and pass it on to his children.

**DU HAS THE WELCOMED
DUTY OF MONITORING
AND ENFORCING THE
CONSERVATION
EASEMENT FOREVER.**



**Q
A**

Can an easement be changed?

The conservation easement is a document that dictates preservation in perpetuity. As the saying goes “perpetuity is a long time.” Changes seldom occur in practice. The only time a significant change is allowed is with the approval of a court of law upon the showing that the original purpose for the easement is no longer valid. An easement occasionally may be amended for certain reasons. The addition of property to the easement, clarification of terms or boundaries, or additional restrictions could be grounds for an amendment. As a general rule, an easement only will be amended if the amendment will strengthen the document and increase protection of the property.

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Who can hold a conservation easement?

An easement holder should be chosen with great care, and it is recommended that a qualified organization be selected. A donor must be sure that the holder has the expertise, time, and financial commitment to protect the property indefinitely. In order to take advantage of the tax benefits of the donation, one condition is that the owner must grant the easement to a public agency or a conservation organization that qualifies as a public charity under Internal Revenue Code Section 501(c)(3).

BECAUSE NEARLY THREE-FOURTHS OF OUR WETLANDS ARE ON PRIVATE LANDS, WORKING WITH LANDOWNERS IS AN INTEGRAL PART OF DUCKS UNLIMITED’S CONSERVATION PLAN.





How does Ducks Unlimited fit in?

Since nearly three-fourths of America's remaining wetlands are found on private lands, working with landowners is an integral part of DU's conservation program. DU believes that most lands can benefit wildlife and produce an economic return to its owner. DU can provide the landowner with technical advice and help the landowner adopt wildlife friendly management practices. DU is a national organization with significant resources. An endowment fund ensures DU will be able to monitor and enforce restrictions on the properties in perpetuity.



What responsibilities does DU have as the holder of an easement?

Monitoring and enforcement of the terms of an easement are a cooperative effort between the owner and the holder. The holder is responsible for enforcement of the restrictions in the document. The holder must monitor the property on a regular basis, and maintain a written record. Each year a regional biologist or other qualified representative from DU will visit the property and prepare a written report based upon the condition of the property. Usually the owner or his manager chooses to accompany the biologist. Both parties need to be assured that the property continues to be maintained in compliance with the terms of the easement. Should the monitoring uncover a violation, then DU has the duty and legal right to require the owner or violator to correct the problem. The holder may take legal action. Communication between the owner and the holder helps to eliminate the need for drastic action, and most problems are solved by the parties themselves.

Q
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Does DU accept all easements offered?

No. DU concentrates its conservation efforts in priority areas that are of importance to waterfowl. These areas include the most important nesting, migration, and wintering areas for migratory birds throughout North America. If the property does not fit with DU's mission, DU will help the landowner find a more appropriate organization to accept the easement.

Q
A

If I donate an easement to DU, will it ever be transferred to the government?

DU is a private nonprofit corporation. It is not affiliated with the federal government or any state or local government branch. In the unlikely event that DU should ever cease to exist as a conservation organization, the easement document provides that the easement automatically transfers to another private nonprofit organization that has experience with conservation easements.





What is the responsibility of the owner in the easement process?

Each state has its own laws that will determine the legal consequences of a conservation easement. Each prospective donor should consult his or her attorney and tax professional as to the laws of their state and the legal and tax implications of the proposed easement.

The landowner is responsible for obtaining an appraisal of the property. The appraiser will furnish both a market value of the property and a value of the property after a conservation easement has been placed thereon. This difference in valuation may determine the amount of the tax deduction allowed. According to IRS rules, if a gift is valued at \$5,000 or more, an appraisal must be completed by a qualified appraiser to document the donation. A qualified appraiser is one who is knowledgeable in making appraisals of the type of property donated, who is not the donor or holder. (See Internal Revenue Code, 26 USC Section 170 Et. Seq., and Treasury Regulations 1-170 Et. Seq. for legal requirements.)

A Baseline Documentation Report is necessary for all easement donations. The “BDR” is an inventory of the conservation values of the property, which includes habitat and wetland analysis, as well as suggested management ideas to ensure its protection and highest use to waterfowl and wildlife. It is essentially a “snapshot picture” of the property at the time of donation. The IRS requires a donor to “make available to the holder prior to the time the donation is made, documentation sufficient to establish the condition of the property at the time of the gift.” (See Treasury Regulations Section 1-170A-14.) A BDR fulfills the IRS documentation requirement, and provides the holder with critical information about the property that is used for monitoring and enforcement. The cost of this report may run several thousand dollars. DU can help the donor to arrange for the preparation of these documents.

Additionally, the landowner will need to obtain a title search or a title opinion from a title examiner or attorney in the area. Title information is necessary to disclose the encumbrances recorded on the land records that might be in conflict with the conservation easement. The cost may be minimal, depending on how long the donor has held title to the property and the number of encumbrances recorded on the land records.

Q A

What are the steps in the easement process?

A landowner who wishes to donate a conservation easement to DU should contact the nearest DU office. A list of offices follows inside the back cover. A regional biologist will contact the landowner and conduct a site visit to determine if the property contains valuable habitat and if it complements DU's mission. The regional biologist will prepare a document for use by DU called a Preliminary Property Inspection Report (or PPI for short). The terms in the easement document will then be negotiated between the owner and DU. In the meantime, the owner will arrange for the appraisal, title work, and BDR. The process is one of mutual cooperation as both donor and holder are working toward the protection of valuable habitat. When both parties are satisfied with the terms and the conditions of the conservation easement, it is signed and recorded with the recording clerk of the local county or town.

**THE PROCESS IS ONE OF MUTUAL COOPERATION AS
BOTH DONOR AND HOLDER ARE WORKING TOWARD
THE PROTECTION OF VALUABLE HABITAT.**





What if there is a mortgage on the property?

An easement, if recorded after a mortgage, could be extinguished if the mortgage is ever foreclosed. Mortgages on the property should be identified, and if the donor will be claiming a deduction, a subordination should be obtained. The existing mortgage holders will have to subordinate (make secondary) their rights to those of the easement holder. In other words, the easement has to be first in line. The donor should contact any lenders early in the easement process and obtain a subordination for those mortgages.



What is the easement stewardship endowment?

DU has the welcomed duty of monitoring and enforcing the easement forever. Of course, this requires funding. DU has established an easement stewardship endowment that is set aside for the permanent work of monitoring and enforcing easements. DU will request that each donor make a tax-deductible donation to the easement stewardship endowment. This donation is based upon the future costs of monitoring, stewarding, and defending the habitat values of the conservation easement. A donation to the endowment ensures that the owner's wishes will be carried out in perpetuity.



Can I donate an easement in my will?

A conservation easement may be granted in a will, but some potential tax benefits may be lost. The landowner should negotiate the terms of the easement with the holder, and arrange for a bequest to the endowment fund. The owner should work with his or her estate planning professional to update his or her will with the appropriate instructions for the executor to follow to complete the donation. It is recommended that the landowner consult legal counsel regarding state law.



What are the estate tax benefits?

Property passed by will or by law upon the death of the owner is subject to estate or inheritance taxes. Federal estate taxes are based upon the current fair market value of the property. Most property values appreciate, or increase, over time. When the landowner dies, the fair market value of the property is assessed at full value for its highest use, usually development. Estate taxes can create a large tax burden for heirs. If the estate is “land rich and cash poor” the tax could force heirs to sell the property. A conservation easement can be the ideal technique to reduce the value of an estate and possibly lower the estate tax burden. If a property is restricted during the owner’s lifetime, only the restricted value of the property is included in the estate.

For example, Mrs. Smith owns a 1,000-acre farm that was bought in the depression for a few dollars an acre. In the real estate market today, the land would bring at least \$5,000 per acre. Her estate value is over five million dollars in real estate alone, and could have a tax liability. She decides to donate a conservation easement on the property, enabling her to significantly reduce her tax burden and possibly help pass the farm to her children.



**A CONSERVATION EASEMENT
CAN BE THE IDEAL TECHNIQUE
TO REDUCE THE VALUE OF AN
ESTATE AND LOWER THE ESTATE
TAX BURDEN.**



What are the income tax benefits?

To qualify for a tax deduction, one requirement is that a conservation easement donation must be a charitable gift as defined by the IRS. The donation must be made to a qualified charitable organization and, if worth more than \$5,000, documented by a qualified appraisal. The maximum charitable deduction is set by federal tax law at a percentage of your annual adjusted gross income (AGI).

In 2015, Congress made permanent the enhanced federal tax incentive for conservation easement donations. Generally, the donor of a conservation easement may be allowed to **deduct up to 50 percent of adjusted gross income** in one year. The excess value of the gift may be carried forward for 15 additional tax years. **Qualifying farmers and ranchers may deduct up to 100 percent of their adjusted gross income**, provided the land remains available for agriculture. These benefits were signed into law on December 18, 2015, and the terms apply to donations made at any time in 2015 and to all donations made after that.

For example, the 2015 rules allow a landowner earning \$100,000 AGI a year who donated a \$1 million easement to deduct \$50,000 (50% of \$100,000 AGI) in the year of the donation and then \$50,000 per year for an additional 15 years for a total of \$800,000 ($\$50,000 * 16$ years) in reduced taxes. In this same example, if the landowner qualifies as a farmer or rancher, the landowner will be able to deduct \$100,000 (100% of AGI) per year and will have reduced his or her taxes by the full value of the donation (\$1 million) in 10 years ($\$100,000 * 10$ years).

If the landowner owns the property for less than one year, the deduction is limited to the basis of the landowner's property. Corporate property also is treated differently, and other rates apply. In some states, the donor also may be entitled to a deduction toward state income taxes. In all cases, the donation should be reviewed with a tax professional or attorney to determine the deductions allowed.

ENHANCED TAX BENEFITS OF DONATED CONSERVATION EASEMENTS

50% deduction of AGI per year

16-year period to realize tax benefit

100% AGI tax relief per year for farmers/ranchers



What conservation easements mean to me.

ROBERT HORTMAN,
MANAGER, MEDWAY PLANTATION

Over the past three hundred years, Medway Plantation has been constantly evolving. It has changed from a rice plantation to a brick plantation to a timber/shooting plantation and now to an educational plantation. There have been some outstanding shooting seasons, some better than others, some brilliant bird dogs, and some wonderful memories of countless people. Without the natural resources none of these activities would have been possible.

However, keeping all this in mind, the most important event that has ever taken place on Medway is the assurance that it will be here for future generations to have the opportunity to make their memories of this special place. We have the unenviable challenge to determine what this part of the world will look like for future generations. If we don't act now, the future of our wild places will be in jeopardy. It has been my privilege to help preserve Mrs. Gertrude Legendre's vision of establishing a conservation legacy for generations to come. Thanks to conservation easements and the efforts of Ducks Unlimited, Medway will be protected from the onslaught of future urban sprawl! Without such a vision for the future there would be little hope for the natural world.

“WE HAVE THE UNENVIABLE CHALLENGE TO DETERMINE WHAT THIS PART OF THE WORLD WILL LOOK LIKE FOR FUTURE GENERATIONS.”



How do I contact Ducks Unlimited?



The following list provides the addresses and phone numbers of all DU conservation offices across the U.S.

National Headquarters

One Waterfowl Way
Memphis, TN 38120-2351
(800) 45DUCKS
(901) 758-3825
easements@ducks.org

Great Lakes/ Atlantic Regional Office

7322 Newman Blvd.
Building 1
Dexter, MI 48130
(734) 623-2000

Southern Regional Office

193 Business Park Drive, Suite E
Ridgeland, MS 39157-6026
(601) 956-1936

South Carolina Field Office

1010 Bankton Circle Suite 200
Hanahan, SC 29410
(843) 730-3385

Great Plains Regional Office 2525

River Road
Bismarck, ND 58503
(701) 355-3500

Western Regional Office

3074 Gold Canal Drive
Rancho Cordova, CA 95670-6116
(916) 852-2000

**DU EMPLOYS TOP BIOLOGISTS AND LAND SPECIALISTS LOCATED
IN DU'S REGIONAL OFFICES AND AT NATIONAL HEADQUARTERS.**



*Ducks Unlimited, Inc. is a private 501 (c)(3) nonprofit organization.
The contents of this booklet are advisory only.
Please consult your attorney or professional advisor.*

For More Information Contact:



One Waterfowl Way
Memphis TN 38120
901.758.3825
easements@ducks.org