



CONSERVATION EASEMENT FACT SHEET

The population of the Ozarks is growing and pressures for development are increasing. As a result, rural areas around St. Louis, Columbia, Springfield, Fayetteville, and other cities are losing their productive farm and forest land and lands with significant wildlife, recreational and scenic values. Some conservation minded landowners donate their land outright to a land trust or a municipality so they can ensure continued conservation use of the property. Others however, want to retain ownership while still conserving their land in perpetuity. For the latter group, the Conservation Easement is an important option.

WHAT IS A CONSERVATION EASEMENT?

Think about the ownership of land as the holding of a bundle of certain rights, such as the right to build a house, to cut timber, to subdivide, to sell the land, and to pass it on to heirs. In the past some of these rights, such as timber cutting and mining, have been used, sold, and taxed separately from the land. The Conservation Easement is based on this principle of the separability of land ownership rights.

A Conservation Easement separates from ownership of the land the right to build further and subdivide. The landowner giving up these "development rights" can continue to use and enjoy the land as before, may receive significant tax advantages, and experiences the satisfaction of protecting the land forever from further development. Many landowners use Conservation Easements to manage the present and future uses of their land. An Easement assures them that their heirs and successors will maintain the land in uses consistent with open space purposes and the landowner's wishes.

The Conservation Easement is a legally enforceable, two-party agreement between a landowner ("grantor") and Ozark Regional Land Trust ("grantee"). Although the decision to create a Conservation Easement is strictly a voluntary one, the restrictions against specified development rights, once set in place, "run with the land" and are binding in perpetuity on all future landowners. The restrictions are spelled out in a Deed of Conservation Easement, a legal document recorded at the County Land Records Office.

The grantee, which receives and holds the Conservation Easement, cannot exercise the development rights given up by the grantor. The grantee in essence becomes an enforcer. It has a long-term responsibility to monitor uses of the land to ensure compliance with the terms of the Conservation Easement. It also has the legal right--and obligation--to enforce these restrictions if a violation occurs.

The terms of Conservation Easements are very flexible (within broad IRS guidelines) and can be tailored to meet the needs of an individual landowner. For example, the terms of the Easement may reserve homesites for the owner's children or for a sensitively designed, limited development which may be financially necessary in order to conserve the remainder of the property.

POSSIBLE TAX ADVANTAGES FOR THE GRANTOR

The landowner and his or her heirs may be eligible for significant tax advantages associated with Conservation Easements:

1) Income Taxes

Surrendering development rights, in the form of a Conservation Easement, constitutes a charitable gift from the landowner which may be deductible for federal and state income tax purposes. The Easement must be in perpetuity, donated to a "qualified conservation organization" like Ozark Regional Land Trust, and must serve a valid "conservation purpose" as defined in the Internal Revenue Code.

The value of the gift, determined by a qualified appraiser, equals the difference between the fair market value of the property before and after the Easement takes effect. There is no typical value of Easements as a percentage of the "before" value of the land, as every Easement and parcel of land are different. Easements accepted by land trusts in *other states* have varied from as little as 10% of the before value of land to as much as 90%.

If a landowner executes a Conservation Easement meeting IRS rules, the landowner can take in one year a deduction in an amount up to 30% of his or her adjusted gross income. (In certain cases a 50% deduction is possible.) If necessary, the deduction can be spread over a six-year period. **NOTE:** Enhanced tax incentives are currently in place through the end of 2009 and are more generous in the percentage of income that is deductible and in the number of years over which a deduction can be carried.

For example:

Market Value <u>Before</u> Conservation Easement (100 Acres @ \$2000)	\$200,000
Less Market Value <u>After</u> Conservation Easement (100 Acres @ \$1200)	<u>\$120,000</u>
Value of Conservation Easement	\$ 80,000

If \$80,000 exceeds 30% of the landowner's adjusted gross income for the tax year in which the gift was made, the landowner can claim the rest of the deduction for up to five more successive years.

2) Property Taxes

Conservation Easement protected properties in Missouri *could be* eligible for property tax benefits according to Section 67.895 of RSMO (2000), which states: "After transfer and acquisition of any such interest [including conservation easements] pursuant to sections 67.870 to 67.910, all county and municipal assessors and taxing authorities, in determining the assessed valuation placed on such open space or area for purposes of taxation of the private ownership therein, shall take due account of and assess private property interests with due regard to the limitation of future use of the

land.” ORLT is not aware of a similar statute existing in Arkansas, but individual assessors may well take into account restrictions imposed by a conservation easement when assessing the value of property for local tax purposes.

3) Estate and Inheritance Taxes

When a landowner executes a Conservation Easement, he or she is lowering the value of his or her taxable estate, and therefore lowering the potential estate tax liability. Many landowners find Conservation Easements an effective way to protect their heirs from burdensome estate taxes on highly valued land, to ensure that the family can continue owning and enjoying the land, and to secure the land from future unwanted development.

4) Gift Taxes

When a landowner intends to give all or part of his or her land to a child or other person during his or her lifetime, the gift will be subject to federal gift taxes if its value exceeds a certain amount. Granting a Conservation Easement prior to giving land to others may reduce or even eliminate the gift tax by lowering the value of the land.

NOTE: *The above discussion of complex tax issues has been simplified for purposes of providing general background information. Landowners are advised to seek professional counsel to determine their specific tax benefits.*

FOR MORE INFORMATION PLEASE CONTACT:

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Ozark Regional Land Trust is a nonprofit land conservation organization founded in 1984. The mission of the Trust is to preserve the natural environment, traditional land use and intrinsic beauty of the Ozarks Bioregion through voluntary cooperation with landowners. The Conservation Easement is one of several land conservation techniques available.