



WHITewater VALLEY LAND TRUST Newsletter

BRIEFING PAPER

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Medicine for Melancholy

Wandering dreams: alas,
Over fields all burned, the wail
of winds that pass.

ONITSURA (1660-1738)

Death and taxes...

Pundits and humorists have often joked that these are the only certainties of life. Morbid thoughts, certainly, but we are pleased now to tell you that for a brief window of time, (but said window slamming shut at 12:00pm midnight, December 31, 2009) you can put off indefinitely if not in perpetuity the death of your farm...AND beat the three horsemen of the "taxmen Apocalypse" from a portion of their due: i.e. income tax, property tax, estate tax.

As part of the Farm Bill signed into effect June, 2008, Congress extended through 2009 a Federal tax incentive for conservation easement donations that has already helped thousands of landowners conserve their land as natural areas able to grow food and fiber, timber and scenic vistas, in perpetuity. If you own land with important natural (or historic) resources such as these, donating a voluntary conservation easement can be one of the smartest ways to conserve the land you love, while maintaining your private property rights and possibly realizing significant federal tax benefits. Historically, the IRS code limited charitable gifts to 30 percent of your adjusted gross income. Congress has now allowed a limited time special exception to land owners to preserve their land.

The Incentive:

- * Raises the deduction a donor can take for donating a conservation easement from 30 percent of his or her 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 the deductions for a voluntary conservation agreement from 5 to 15 years.

This is a powerful tool for allowing modest-income donors to receive greater credit for donating a very valuable conservation easement on property they own. Please note that 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 can also result in property tax savings, e.g. the State of Indiana is one such.

And Death...?

Sorry...we don't have any ideas how you can personally escape the grim reaper or put him off from his appointed rounds, well, except exercise regularly, drink plenty of water, take your vitamins, eat an apple a day, yadda, yadda, yadda...AND make sure you were born with

good genes. *Importantly for your farm or woodlands*, however, a conservation easement can ensure for *that* open space that it remains thus in perpetuity, forever. Please note: the dictionary defines that as a really long time, especially near the end!

Gentle reader, may we suggest that this is also an especially fitting tribute to pay one's ancestors if they have willed you the land you would now protect with a conservation easement, AND an enlightened, powerful tool to ensure that land remains intact so to provide for your children and grandchildren who choose to stay on the land. *WVLT also strongly suggests that land for growing food will soon become more valuable than for growing houses with the US having become a net-dollar importer of agricultural products in 2007.*



"We may face heartaches; we may face setbacks; we may face discouragement; but if we have the courage to persevere, I believe we can turn all this into an industrial wasteland."

Indiana Second in U.S. in Number of Farms Lost...

This is old news, of course, a headline from years ago. Sadly this trend continued at the same brisk pace right up to the financial meltdown of September, 2008, and even now has still failed to slow appreciably up to now.

Your Land as a "401K"

It is the Whitewater Valley Land Trust's conviction that suburban sprawl, i.e. homes popping up in corn and bean fields, has effectively been ended for the foreseeable future, owing to the U.S. financial bubble having burst. Sadly, many landowners had come to think of their land as part or all of their retirement plan, a kind of 401K, as it were. That plan is probably not going to work out now as land prices peak and begin a long, steady decline, similar to the 1970's. An even more likely comparison would be to the 1930's and

1890's when real estate prices fell an average of over ninety percent in the decade that followed the initial financial panic.

Now "Don't Kill the messenger..."

...please keep reading. We have GOOD NEWS for you—if you grab the "brass ring" being offered by Congress. Placing a conservation easement on some or all of your farm and/or woodlands has potential for large income tax savings to you. This tax-saving, farm-preserving, thoughtful, conservation-minded plan can also be an important part of your estate planning.

Continued on page 2: But the Clock is Ticking...

But the Clock is Ticking...

The Congress specified that the conservation easement must be established or at least set in motion by midnight, December 31, 2009. Here in the pre-spring days of March, 2009, the Whitewater Valley Land Trust has ample time to make your conservation easement a reality. As the weeks and months pass, that is increasingly less likely. Don't wait. At least call with your questions.

What is a CONSERVATION EASEMENT?

A conservation easement (CE), like any easement is a legally enforceable interest in land, created by an easement agreement negotiated between the landowner and the recipient of the easement and is tailored to the particular property and the concerns of the negotiators.

A conservation easement protects land from inappropriate development. It is the legal glue that binds a property owner's good intentions to the land in perpetuity. Landowners may be inspired by many things: they love their land's mostly unspoiled rural nature, they feel connected to their land, and they wish to leave a legacy for future generations. Conservation easement donors retain title to their property, and the conservation easement (CE) runs with the title regardless of future changes in ownership.

CEs typically preserve natural values by restricting and/or prohibiting future development, and the CE holder commits to annually monitor for compliance. Think of land ownership as holding a bundle of rights that include the right to subdivide, construct buildings, farm, irrigate, harvest timber or restrict access. A landowner may sell or donate the whole bundle of rights or even just one or two of those rights. To give away certain rights for the purpose of conservation, while retaining other rights, a property owner grants a deed of conservation easement to a land trust like the Whitewater Valley Land Trust (WVLT).

Granting a CE can yield tax savings. The donation of it may qualify as a charitable contribution. Frequently donated, occasionally sold, the typical CE is recognized by all tax authorities in the U.S. including the IRS, as a public benefit, and as such tax deductible to the extent that its value is unreimbursed to the donor or seller. Besides income tax it may reduce estate and/or gift taxes. WVLT has much information about CEs; please contact us with your questions.

What are the steps in donating a CONSERVATION EASEMENT?

Once the decision has been made to donate a conservation easement, the landowner and the Whitewater Valley Land Trust (WVLT) negotiate to agree on the specific terms of the easement. WVLT prepares a resource report called the "baseline documentation" which documents the condition of the property at the time the easement is donated. If the landowner intends to apply for a charitable income tax deduction, he or she must secure a subordination of any mortgage or contract holders, and procure an appraisal; a title search is also recommended to verify that no third party already holds an interest in the property. Following the CE's notarized signature by both *grantor* and *grantee*, like any deed, it must be *recorded*.

What are the terms of a CONSERVATION EASEMENT?

A conservation easement spells out the uses that are consistent and inconsistent with the conservation values desired by the landowner. It is a voluntary agreement between the landowner and the Whitewater Valley Land Trust (WVLT). No two conservation easements are alike. Each is tailored to the unique character of the land and the conservation desires of its owner(s).

The following are some general examples of the types of uses that can be **allowed** by a conservation easement:

- Continued agricultural and silvicultural use (As agriculture is the cultivation of fields (agra), silviculture is the cultivation of forests (silva))
- Construction of buildings, fences, water improvements, etc., necessary for agriculture and compatible with conservation objectives
- Sale, devise, gifting, or other methods of transferring parcels, subject to terms of the easement
- Landowner control of access
- Forest, wildlife and fisheries protection, restoration and enhancement projects
- Any and all uses not specifically prohibited

Types of uses that generally are **restricted** by a CE include:

- Subdivision for residential or commercial activities
- Construction of non-agricultural buildings
- Non-agricultural commercial activities
- Dumping of non-compostable or toxic waste
- Surface mining

A conservation easement assigns three "positive rights" to the holder of the easement (WVLT):

1. The right to preserve and protect the property according to mutually agreed upon terms.
2. The right (with proper advance notification to the landowner) to enter the property to monitor activities (usually once a year).
3. The right to "enjoin and restore," which assures that the CE donor/landowner's desires, as spelled out in the easement, are enforceable.

The terms of the easement do not in any way negate or modify state or federal law. Specifically, a conservation easement cannot prevent condemnation.

What are THE LEGAL REQUIREMENTS?

Indiana law authorizes the granting of conservation easements to qualified private organizations and the law requires that the deed of conservation easement be duly recorded. Federal law governs only the tax treatment of a conservation easement. It is seen as a tax-deductible charitable gift. While you should consult your attorney or CPA financial advisor, in general the following major rules apply in order to receive a tax benefit:

1. The conservation easement must be granted in perpetuity (mortgage and/or contract holders must agree to subordinate to the easement).
2. The conservation easement must provide *at least one* of the following three conservation purposes:
 - Preservation of relatively natural habitat for fish, wildlife, plants, or similar ecosystems.
 - Preservation of open space (including farm land or forest land) or (1) scenic enjoyment by the general public or (2) significant public benefit pursuant to a clearly delineated government policy.
 - Preservation of land areas for the education of or use for outdoor recreation by the general public.
3. The conservation easement must be granted to a qualified organization.
4. The conservation easement must prohibit all surface mining. If the easement donor does not own all of the mineral rights, the possibility of surface mining must be determined "so remote as to be negligible."
5. The conservation easement's value must be determined by data documenting the resources existing prior to donation of the easement.

*Ten
years from now
Americans could be
as concerned over the
loss of the Nation's
prime and important
farm lands as they
are today over
shortages of oil
and gasoline.*

Shirley Foster Fields
(1979)



MEMBERSHIP APPLICATION AND RENEWAL

Please check all that apply:

- Yes! I want to support the mission and continuing great work of WVLT here in the Whitewater Valley by:
- joining WVLT volunteering (contact me about choices)
 renewing membership making a contribution

Name(s) _____

Address _____

City _____ State _____ Zip _____

Phone (not required) _____

e-mail (not required) _____

WVLT is a not-for-profit / public benefit 501(c)(3) Indiana corporation to which payment of all dues and contributions are tax-deductible.

Please send check payable to: Whitewater Valley Land Trust, Inc.
4910 Shoemaker Rd., Centerville, IN 47330

Annual membership dues for singles, families, organizations and businesses are just \$10. Joining now gives you membership for the new year, to Jan. 15, 2010 \$ _____

Further contributions to ANY of the following WVLT accounts would be gratefully accepted:

Purchase of quality eligible sites as they become available for new state nature preserves, etc. in our valley \$ _____

Blair Hodowal Natural Areas Preservation Endowment Fund. \$ _____

Land Stewardship \$ _____

Legal Defense of Easements Fund \$ _____

Membership Promotion and General Overhead Expense \$ _____

Use Where WVLT Needs Most \$ _____

TOTAL ENCLOSED \$ _____

Thank you for your support!

If you are a WVLT member, you're a "valley keeper"!

What are THE POTENTIAL TAX BENEFITS?

When a conservation easement meets federal requirements as a charitable gift, the donor of the easement may be entitled to a reduction in income and/or estate taxes.

Income tax The value of the easement as a charitable gift is determined by a qualified appraiser who values the property before and after the easement restrictions are applied. The difference between these two values is the amount of the charitable gift for tax purposes.

This gift amount is treated as a tax-deductible charitable contribution. By special act of Congress in 2008 an extraordinary income tax break was established for donations of CEs through year end 2009. Previously, the charitable donation of a CE was limited to 30% of adjusted gross income in first year of the gift and any remainder could be carried forward for up to 5 additional years of similar deductions. Through year end 2009 nonfarmers are now given 50% and 15 years carry forward! If over half the donor's income is derived from agriculture, this special tax provision gives 100% and 15 years!

Estate and Gift Taxes Conservation easements are a significant and useful estate planning tool. They ordinarily result in a reduction of property value for estate and gift tax purposes. This can ease the financial burden of passing property on to heirs. The amount of value reduction is unique to each property but is generally the difference between its subdivision development value and its agricultural value.

What happens after THE EASEMENT IS IN PLACE?

Once a conservation easement is signed, WVLT and the landowner begin a working relationship to assure that the intended conservation becomes a reality. **WVLT is not in the day-to-day management business.** Landowners continue to make all their property management decisions. The easement limits only the broad parameters of land use such as subdivision, commercial development, construction and surface mining. Annual monitoring visits are conducted by WVLT stewardship staff. These visits foster good communication with the landowner and an opportunity to answer questions or respond to concerns. In many ways the conservation easement is a working partnership for the land. Mutual respect and clear understanding of easement terms have helped avoid potential conflict. This system has served landowners well.

MYTHS and TRUTHS

The truth is that conservation easements are between the landowner and WVLT. No government entity is involved in this private property transaction; no WVLT easements are held by the federal government. It is also true that no public access is acquired by the conservation

easement. Yes, the CE's perpetuity requirement limits your children's options, but only to extent the CE ensures the land will remain open space, rather than become a rural subdivision. WVLT is funded by private donations. WVLT's board of trustees are Hoosiers who donate their time and expertise to oversee the organization.

What is a "LAND TRUST"?

A land trust is a non-governmental (private) nonprofit conservation organization of citizen volunteers working to protect special natural areas and productive farmland, forests, historic structures and sites and scenic byways, using their collective expertise helping interested landowners find satisfactory solutions for preserving their land's natural values for the benefit of present and future generations. More than 1,700 U.S. land trusts have preserved over 20 million acres in the past 40 years, including approximately 70,000 acres in Indiana.

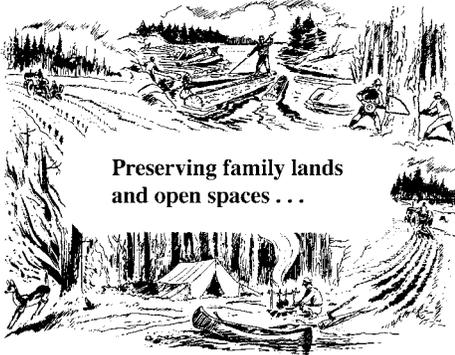
Land trusts depend on the public—people like you—for their support, both for volunteers and financially, to accomplish their mission of land conservation. Land trusts often partner with public agencies to achieve mutual goals, but their main tools include: providing information and education...their charity status, allowing gifts of cash and property to be tax deductible by donors...outright purchase of land...and especially the "partnering" with landowning members of the public in application of the unique land law device known as the "conservation easement."

About the WHITEWATER VALLEY LAND TRUST

Whitewater Valley Land Trust (WVLT) is a private, non-profit, all volunteer, membership supported land trust dedicated to preserving and enhancing the still beautiful Whitewater Valley, one of Indiana's last best places. Since 1999, WVLT has been working with landowners to protect and conserve their private land and water resources, agricultural lands, forest, fish and wildlife habitat and scenic open spaces. Governed by a board of volunteer trustees who are all Hoosiers, elected by the dues-paying membership, WVLT has already succeeded in protecting many hundreds of wonderful acres of natural area. Some are now even "state nature preserves" purchased by WVLT with help from many sources: these sites are extraordinarily rich in native flora species.

If you need MORE INFORMATION

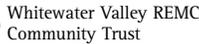
The information in this briefing paper is intended to provide an overview of the conservation easement process. It is not intended to provide definitive legal or tax advice. If you need more specific information or wish to discuss a conservation easement donation, or to become a member, write or call the WVLT office at 765-962-2427 or visit our website at www.whitewatervalleylandtrust.org.



Preserving family lands
and open spaces . . .

. . . because this is where we live!

WVLT is proud to acknowledge
the continued support of:



FARMER'S LAST WILL

I LEAVE:

- To my wife My overdraft at the bank. Maybe she can explain it.
- To my son Equity on my car. Now he will have to go to work to meet the payments.
- To my banker My soul. He has the mortgage on it anyway.
- To my neighbor My clown suit. He will need it if he continues to farm as he has in the past
- To FSA My unpaid bills. They took some real chances on me. I want to do something for them.
- To the ASCS My grain bin. I was planning to let them take it next year anyway.
- To the farm adviser 50 bushels of corn, to see if he can hit the high market. I never did.
- To the junk man All my machinery. He's had his eyes on it for years.
- To my undertaker A special request. I want six implement and fertilizer dealers for my pallbearers. They are used to carrying me.
- To the weatherman Rain, sleet, and snow for the funeral please. No sense in having good weather now.
- To the grave digger Don't bother. The hole I'm in should be big enough.
- To the monument maker Set up a jig for the epitaph, "Here lies a farmer who has now properly assumed all of his obligations."



BOARD OF TRUSTEES

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The Whitwater Valley Land Trust (WVLT) is a 501(c)(3) not-for-profit organization/public benefit corporation to which payment of all dues and contributions are tax-deductible. Our goal is to preserve the natural, historic and aesthetic values of our regional landscape. Our service is to provide land owners with ways to perpetuate these significant aspects of their lands so that future generations, including their children, grandchildren and beyond, may continue to benefit from their foresight.



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