

# Preservation Easements

## PROTECTION FOR HISTORIC PROPERTY

**INDIANA LANDMARKS—A NONPROFIT** organization—revitalizes and protects historic places. Many owners of historic structures share our commitment to preservation and want to ensure the longterm stewardship and protection of their property. The preservation easement is a tool that accomplishes this goal.

A preservation easement—a legal agreement—gives a qualified nonprofit organization like Indiana Landmarks the right and obligation to protect a structure's exterior from changes that would compromise its historical, architectural or natural character. This legal interest in a historic property gives Indiana Landmarks the responsibility to protect the exterior. The agreement may also be written to protect interior features, insure proper maintenance, or prohibit subdivision of land.

Although an easement places restrictions that require Indiana Landmarks' approval of exterior changes, the owner retains title and is free to use, sell, lease or give the property away. Because the easement is perpetual—recorded and attached to the deed—it is binding on all future owners, and on Indiana Landmarks.

In most cases, easement donors make a tax-deductible contribution to Indiana Landmarks' Easement Monitoring Fund to help cover perpetual monitoring and legal costs should litigation be necessary in the future to protect the property. We take our protective role seriously and created this fund to ensure our ability to defend easement provisions.

Once the easement agreement is signed and recorded, Indiana Landmarks assumes responsibility for annually monitoring the property to ensure compliance with the terms of the easement. Each year, Indiana Landmarks visits the property and notes in a report sent to the current owner if there are violations of the easement that must be corrected.

The owner of the property must contact Indiana Landmarks for approval before making a change that affects the building's exterior, setting, or other aspects

governed by the easement. In turn, when the desire to make a change arises, Indiana Landmarks offers architectural and design advice to current and future owners to ensure that changes will not conflict with the preservation terms of the easement.

## FINANCIAL BENEFITS OF EASEMENTS

In addition to protecting a historic property, an easement offers the potential for favorable income, estate and property tax treatment. Under the Internal Revenue Code (IRC), donation of a qualified easement is a tax-deductible gift.

### Income Tax Deductions

If the donation meets the standards established in IRC Sec 170 and an appraisal has established the value of the easement, the donor may claim a federal income tax deduction. To provide a deduction, an easement must be:

- Granted to a nonprofit organization with a 501(c)3 tax status;
- Granted exclusively for conservation purposes, in perpetuity;
- Granted on a certified historic structure, defined as a structure or land area listed in the National Register of Historic Places or contributing to a registered historic district (a preliminary determination of significance or eligibility for listing is not adequate for the claim of a charitable deduction);
- Granted on a property not subject to a prior lien or mortgage.

An easement donor who wishes to claim a deduction should retain a professional appraiser with experience in the evaluation of historic property to determine the value of the easement, usually calculated as the difference between the fair market value of the property before and after the donation of the easement. Indiana Landmarks recommends that the donor consult a tax accountant and/or a tax attorney.

## TAX IMPACT

### Estate Taxes

The gift of a preservation easement to Indiana Landmarks may also reduce federal estate taxes. If given during the donor's lifetime, the easement's value is not included when the value of the donor's estate is determined. In addition, the easement may prevent a "highest and best use" reappraisal of the property and result in lower estate taxes.

### Property Taxes

In 1984, the Indiana legislature passed the Uniform Conservation Easement Act (IC 32-5-2.6), which says that "real property subject to a conservation easement shall be assessed and taxed on a basis that reflects the easement." The degree of tax reduction due to an easement depends on the property's location, use and development potential. For example, the tax reduction will likely be greater for an easement on a downtown commercial building than on a residence in an area where land is less valuable and the limitations imposed by the easement less impactful.

### Investment Tax Credit

A developer who is restoring a certified historic building may combine the gift of an easement with use of the 20 percent federal investment tax credit for substantial rehabilitation if the structure is income-producing. Personal residences do not qualify for the 20 percent credit. The property must be listed in the National Register of Historic Places.

For personal residences listed in the State or National Registers, the 20 percent Indiana Residential Historic Rehabilitation Credit for qualified rehabilitation may be combined with an easement donation.

## RECOMMENDED PROCESS OF EASEMENT DONATION

Here is the process Indiana Landmarks advises for drafting an easement with a donor who plans to claim a tax deduction for the value of the gift:

- Owner meets with Indiana Landmarks staff to discuss his or her preservation goals for the property.

- Check to ensure the property is listed in the National Register of Historic Places. The landmark must be listed before or during the year in which the deduction is taken. In some circumstances, Indiana Landmarks may assist in nominating a property to the National Register. We may accept an easement on a property that is not listed, although the owner would not be eligible to claim a tax deduction.
- The donor retains a professional appraiser with experience in the valuation of historic property. (Reminder: to qualify for a tax deduction, the recorded easement must have priority over liens and mortgages.)
- Indiana Landmarks drafts the easement in cooperation with the owner and his or her attorney.
- Indiana Landmarks' board of directors approves acceptance of the easement and the obligation it represents.
- Indiana Landmarks records the easement in the county where the historic property is located.
- Indiana Landmarks begins annual monitoring of the property, which will continue on a perpetual basis.

# INDIANA LANDMARKS

Indiana Landmarks staff can help owners determine if a preservation easement is an option for preserving their historic properties. Contact our regional office that serves the county where the prospective easement property is located:

## Central Regional Office

Indianapolis  
317-639-4534 or 800-450-4534  
[central@indianalandmarks.org](mailto:central@indianalandmarks.org)

## Eastern Regional Office

Richmond  
765-478-3172  
[east@indianalandmarks.org](mailto:east@indianalandmarks.org)

## Northeast Field Office

Wabash  
260-563-7094  
[northeast@indianalandmarks.org](mailto:northeast@indianalandmarks.org)

## Northern Regional Office

South Bend  
574-232-4534  
[north@indianalandmarks.org](mailto:north@indianalandmarks.org)

## Northwest Field Office

Gary  
219-947-2657  
[northwest@indianalandmarks.org](mailto:northwest@indianalandmarks.org)

## Southeast Field Office

Aurora  
812-926-0983  
[southeast@indianalandmarks.org](mailto:southeast@indianalandmarks.org)

## Southern Regional Office

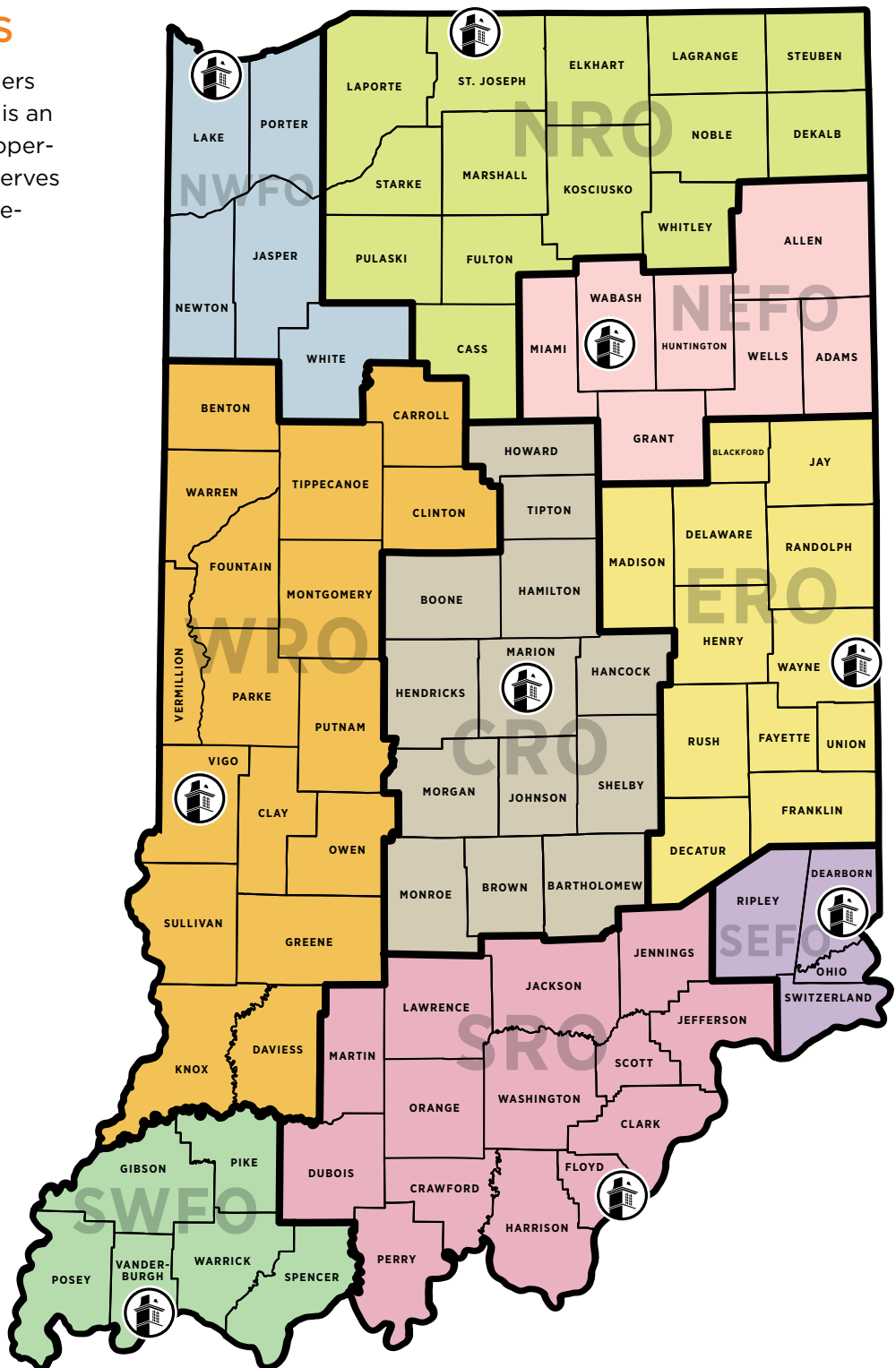
Jeffersonville  
812-284-4534  
[south@indianalandmarks.org](mailto:south@indianalandmarks.org)

## Southwest Field Office

Evansville  
812-423-2988  
[southwest@indianalandmarks.org](mailto:southwest@indianalandmarks.org)

## Western Regional Office

Terre Haute  
812-232-4534  
[west@indianalandmarks.org](mailto:west@indianalandmarks.org)



## INDIANA LANDMARKS

*Indiana Landmarks revitalizes communities,  
strengthens connections to our diverse heritage,  
and saves meaningful places*