

Land Conservation Strategies



*Preserving our natural
and historic heritage*

A GUIDE FOR LANDOWNERS

How can I protect my land? What are my options?

Do I want to protect all of my land or a portion of it?

Do I want to restrict the land to certain uses?

Can I donate the land? If I am unable to donate property in its entirety, what other options do I have?

What are the financial benefits of donating land, conservation easements or partial interests in land?

Are tax implications important?

How will my decisions affect my land and the community?

Do my children wish to see the land protected?

Landowner's Options for Protecting Family Lands

Preserving family lands from future development can be a satisfying act of generosity for people committed to protecting the environment. Many valuable sites of historic importance, natural significance, and scenic beauty, protected today, would have been developed had it not been for the generosity of individuals, groups and companies who chose to donate their land to one of the public or private organizations which can accept land and assure that it will remain in its natural state.

For over 40 years, Heritage Conservancy has been working with landowners to preserve their family lands through a variety of techniques designed to carry out the landowner's wishes. Some of these strategies also offer tax incentives for the landowner.

This guide will focus on the four most frequently used strategies: fee simple donation, conservation easement, bargain sale and conservation-based development.

Fee Simple Donation

A fee simple donation is the transfer of a property by deeding it directly to a charitable organization for conservation or other purposes. Tax benefits may apply to the donor.

Heritage Conservancy does not give accounting or legal advice, however, we can provide you with the following hypothetical calculations that you may adjust to your own use and discuss with your tax advisor regarding income tax deductibility.

Tax Benefits- Fee Simple

Example: If one (1) acre of land were appraised at \$10,000 and if you were to DONATE it to a non-profit organization such as Heritage Conservancy, you would be able to claim a deduction from federal income taxes on the FULL VALUE up to 30% of your adjusted gross income. Assuming you were in the 35% tax bracket, you would save \$3,500 in income taxes.

If you were unable to take advantage of the full \$10,000 deduction in the year you donated the property, you could CARRY-FORWARD the unused deduction for up to five additional years for up to \$3,500 per year until the full deduction was used up.

Conservation Easement Donation

A conservation easement is a legally binding covenant between current and future property owners and an organization such as the conservancy which preserves significant natural areas (i.e. stream valleys, farmland, woodland, wildlife habitat, unique plant communities) and special natural features of the property by restricting selected uses.

A conservation easement allows a property owner to retain ownership of his property, including the ability to pass the

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Conservation Easements - Questions and Answers

What is a conservation easement?

A conservation easement is a method of protecting and preserving significant natural areas, (i.e. stream valleys, farmland, woodland, wildlife habitat, unique plant communities) and special natural features of the property by restricting selected uses.

Will I still own my property under “easement?”

Yes. The conservation easement allows the property owner to retain title, pass the property on to heirs or even sell the property. An easement protects the property against uses which may change the natural features of the land.

How long does an easement last?

In most cases, conservation easements are placed on a property to last forever, legally known as “in perpetuity.” Easements are legally binding covenants to current and all future owners of a property placed under conservation easement. The easement is recorded in the Land Records Office in the form of a deed. Any title search of a property will reveal the existence of a conservation easement and all future owners will be bound by it.

What are the advantages of an easement?

When a landowner places a property under conservation easement, he or she has permanently protected that property. The restrictions placed on the property through the conservation easement allow the landowner to determine how the property will be used long after he is gone. In addition to the knowledge that the property will remain protected against development, the owner can derive tax benefits from the easement. These can include reduction of federal income taxes, reduction of estate or inheritance taxes, and possible deduction in real estate taxes.

Can I still reside on my land after an easement has been placed?

Yes. A conservation easement allows you to retain title and also remain on the land. It only restricts those uses such as subdivision and development which are described in the easement. If desired, easements may be written to provide for specific limited development of a property, such as

additions or modifications to existing structures, home sites for children, farm structure construction, and specific property uses, such as cutting of firewood and normal agricultural practices.

How can granting an easement reduce a property owner's estate tax?

Many heirs to large historic estates and to large tracts of open space, such as family farms, face monumental estate taxes. Even if the heirs wish to keep their property in the existing condition, the federal estate tax is levied not on the value of the property for its existing use, but on its fair market value, its highest and best use. The resulting estate tax can be so high that the heirs must sell the property to pay the taxes.

A conservation easement, however, often can reduce estate taxes. If the property owner has restricted the property by a perpetual conservation easement before his or her death or by including the easement in his will, the property must be valued in the estate at its restricted value. To the extent that the restricted value is lower than the unrestricted value, the value of the estate will be less, and the estate will thus be subject to a lower estate tax.

Even if a property owner does not want to restrict the property during his or her lifetime, the owner can still specify in his or her will that a charitable gift of a conservation easement be made to a qualifying organization upon the owner's death. Assuming that the easement is properly structured, the value of the easement gift will be deducted from the estate, reducing the value on which estate taxes are levied.

Must an easement open my land to public access?

No. The land is still privately owned, and the easement-holding organization is responsible for monitoring the property. If an easement donor does wish public access for educational or environmental recreation, the easement can be written to allow for this.

How can donating an easement reduce a property owner's income tax?

The donation of a conservation easement is a tax-deductible charitable gift, provided that the

Conservation Easements - Questions and Answers

easement is perpetual and is donated “exclusively for conservation purposes” to a qualified conservation organization or public agency listed under Section 501(c)3 of the Internal Revenue Code. The Heritage Conservancy is a qualified organization under this code. Further qualifications exist under Internal Revenue Code Section 170(h) which generally defines “conservation purposes” to include the following:

- the preservation of land areas for outdoor recreation by, or for, the education of, the general public,
- the protection of relatively natural habitats of fish, wildlife, or plants, or similar ecosystems,
- the preservation of open space - including farmland and forest land - for scenic enjoyment or pursuant to an adopted governmental conservation policy; in either case, such open space preservation must yield a significant public benefit, and
- the preservation of historically important land areas or buildings

A donation need only fit into one of these categories to qualify. To determine the value of the easement donation, the owner has the property appraised both at its fair market value without the easement restrictions and at its fair market value with the easement restrictions. The difference between these two appraised values is the easement value. Detailed federal regulations govern these appraisals.

Example: A property has an appraised fair market value of \$100,000. Mrs. Price, the landowner, donates a conservation easement to a local land trust. The easement restrictions reduce the property’s market value to \$64,000. Thus, the value of her gift of the easement is \$36,000. Assuming the easement meets the conservation purposes test, Mrs. Price - like any donor of appreciated property - is eligible to deduct an amount equal to 30 percent of her adjusted gross income each year for a total of six years, or until the value of the gift has been used up. If Mrs. Price has an annual adjusted gross income of \$60,000, she can deduct \$18,000 a year ($30\% \times \$60,000$) until she

has used up the \$36,000 value. In this case, she will use up the gift in two years ($2 \times \$18,000 = \$36,000$) if her income does not change. This is just a simple example.

Easement donors may qualify for greater tax savings, especially with the current inflated price of real estate in our area. Potential easement donors should seek their own legal counsel to determine exactly how this method of land protection will benefit their individual situation.

Can granting an easement reduce an owner’s property tax?

Property tax assessment usually is based on the property’s market value, which reflects the property’s development potential. If a conservation easement reduces the development potential of the property, it may reduce the level of assessment and the amount of the owner’s property taxes. This is unlikely if the property is already valued with a preferential tax assessment which relates to farmland or open space and woodland use. However unlike these preferential tax assessments, a conservation easement is a permanent preservation method and as such would not be subject to any roll-back taxes, as the land use will not change.

The actual amount of property tax reduction, if any, depends on many factors. State law and the personal attitudes of local officials and assessors may influence or determine the decision to award property tax relief to easement grantor.

Is there any cost to me in placing my property under conservation easement?

Yes. There are some costs accrued by the landowner in placing a Conservation Easement on a property. These include:

- the costs of legal counsel
- an appraisal necessary for IRS purposes
- survey costs only if a portion of the property not clearly defined in a legal description is to be placed under easement
- County Recorder’s fee
- Heritage Conservancy’s costs: the materials and staff time necessary to prepare the easement documentation and the baseline documentation, and
- an endowment for Heritage Conservancy to monitor and defend the easement.

Landowner's Options

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property on to his heirs or sell the property, while still providing for the site's protection. It assures that future use of a property will be consistent with conservation purposes through specific clauses in the easement document. The property remains in private ownership and does not need to be opened to the public.

Tax Benefits - Conservation Easement

Example: A charitable deduction for donation of a conservation easement is valued through appraisal of the difference between highest and best use value of land (based on development potential under current zoning) and restricted value of the land.

Thus if: 10 acres of land is valued at \$100,000 with development potential (highest and best use). The same land is valued at \$25,000 with restrictions (the valuation will depend on how you restrict use, for instance it will be less if you allow for a building en-

velope for one residential lot).

The VALUE you GIVE AWAY is the conservation easement value: \$75,000.

You then may claim the conservation easement value in the same way you would a fee simple gift, up to 30% of your adjusted gross income, with a possible five-year carry forward to allow you to use the full value of the gift.

In this scenario, if you were in the 35% tax bracket and your donation value is \$75,000, your actual total savings in income tax would be \$26,250. An easement runs with the property in perpetuity. A third party monitors the easement to assure compliance.

Bargain Sale

A bargain sale is the sale of a property to a qualified tax exempt organization or government entity for less than the fair market value. A bargain sale provides a tax benefit to the property owner as the difference between the appraised value and the actual sale price is a charitable contribution which is

treated in the same manner as the previous scenarios.

Conservation-Based Development

Conservation-based development is a process in which development is driven by the preservation of the ecological values of the property as well as the achievement of the economic goals of the owner. This is accomplished by limiting future uses and regulating changes that can be made to the land while providing a reasonable return on the property owner's investment in the land. This technique may use a combination of the above cited preservation tools to accomplish this goal.

In this process the property remains in private hands. The right to sell or transfer in any way remains with the property owner, subject to an easement. This preserves a significant portion of the original tract as "open space" and may afford tax benefits if an easement is donated.

If you have land you would like to protect for future generations, learn more about the options available to you. Decisions affecting the ownership and use of your property should only be made after careful consideration and professional consultation. For more information, call

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Resource Protection Glossary of Terms

BARGAIN SALE - Sale of a property to a tax exempt organization for less than the fair market value.

BASELINE DOCUMENTATION - Information and documentation to give evidence to the condition of land at the time a conservation easement is made.

BEQUEST - A gift of money, real property, or conservation easement in a person's will; can secure conservation of property and take property value out of calculation for estate tax.

CAPITAL GAINS - profit from the sale of land or other capital asset in excess of cost, or other basis.

CHARITABLE CONTRIBUTION- The tax deductible transfer of money or property to a qualified charitable organization.

CONSERVANCY - An organization specifically set up to promote and affect conservation of natural and historic resources.

CONSERVATION - Careful preservation and protection of resources, usually referring to land and related natural resources, includes planned management of resources to protect their future integrity and value.

CONSERVATION-BASED DEVELOPMENT - a develop-

ment plan for a property that frequently incorporates the use of conservation easements and permits landowners to undertake a specified and limited amount of future building or development that does not interfere with the land's conservation value.

CONSERVATION EASEMENT - A legally-binding agreement between a property owner and an organization such as a conservancy which protects natural resource values of the property by restricting selected uses. The property remains in private ownership and does not need to be opened to the public. Tax benefits may apply to the donor.

DEED RESTRICTION - a written stipulation contained within a deed that restricts certain future uses of the property generally inserted at the time of transfer. A deed restriction may include restrictions similar to those contained within a conservation easement. However, enforcement may only be carried out by the prior owner or other parties to the transaction and the restrictions may be canceled at any time by mutual written agreement.

DONOR - A person who makes a charitable contribution to a qualified organization.

ENDOWMENT - A permanent stewardship fund established to support costs of maintaining a property or defending and monitoring a conservation easement.

Permanence is assured by restricting withdrawals from the principal and relying on investment income for annual cost.

ESTATE TAXES - The combined state and federal taxes levied against one's total estate including real property at death, payable within nine months and before distribution to the heirs; with \$625,000 allowable exemption, federal taxes alone are 55% and can be devastating to continued ownership of significant properties by the heirs.

GIFT IN FEE SIMPLE - Transfer of a property by deeding it directly to a charitable organization for conservation or other purposes. Tax benefits may apply to the donor.

QUALIFIED CHARITABLE ORGANIZATION - An organization which has been recognized by the Internal Revenue Service (IRS) as a 501(c)(3) organization for the public benefit.

STEWARDSHIP - Caring for and managing resources with good conservation practices to ensure their protection; a philosophy of land management which focuses on caring and preservation rather than control.