



Conservation Easements

What is a conservation easement?

A conservation easement is a voluntary legal agreement between a landowner and a qualified conservation organization or public agency. In the agreement the landowner (Grantor or Donor) promises to keep the land in its natural condition without extensive disturbance, and the conservation organization or public agency (Grantee) is granted the right to enforce the covenants of the agreement and to monitor the property.

- This type of agreement benefits landowners and the public because it protects land while leaving it in private ownership. The landowner retains ownership, and in the case of farmland or other productive land, continues using the land for farming or forestry.
- The conservation easement is similar to the declaration of restrictive covenants in a subdivision. That is, it contains a series of restrictions relating to various uses of land.
- Each conservation easement is unique and negotiated between the landowner and the easement holder. Can allow for limited land subdivision, timbering, agricultural use, hunting and fishing, and limited construction of homes or other buildings.
- Conservation easements **DO NOT** remove land from property tax rolls, but can sometimes reduce the amount of property taxes paid.
- Under North Carolina property law, a conservation agreement may be created for a term or it may be perpetual. However, if the landowner wishes to claim federal and state income tax deductions, the agreement must be granted in perpetuity.
- Does **not** let general public access your land (unless your intent). The conservation easement holder arranges with the landowner to visit the property, usually once a year, to document that the land is being protected as agreed.
- Conservation easements can be placed on whole or portions of total property. Land enrolled in a conservation easement can be condemned for public purpose (roads, infrastructure, etc.).
- Perpetual easements can be purchased or donated and lower property value for estate purposes.

When is a conservation easement the right method for land protection?

Conservation easements seem to work best when the following circumstances are present:

- the landowner is motivated by the desire to conserve and preserve land;
- current and future uses of the land by the owner are compatible with preservation of its natural features; and
- the owner can utilize the tax advantages of an income tax deduction, tax credit, and/or a reduction in the value of his or her potential estate.

Qualifying for Federal & State Income Tax Benefits

To qualify as a charitable contribution for federal and state income tax purposes, an easement **must be perpetual** and made to a qualified grantee (a nonprofit organization or public agency) for the public benefit. The easement must meet one or more of the following conservation purposes:

- preservation of land for public outdoor recreation or education;
- protection of relatively natural habitats of fish, wildlife, or plants;
- preservation of historically important land or buildings or other conservation purposes;
- scenic enjoyment of the general public.

Federal Tax Incentives

The Income Tax Charitable Contribution Deduction is a key federal incentive to encourage landowners to make a qualified conservation contribution. The donation of a conservation easement normally qualifies as a charitable contribution, which may entitle the donor to receive federal income tax deductions. The value of a conservation easement is based on the reduction of the land's value after the easement is in place.

On August 17, 2006 President Bush signed into law significant new tax incentives for conservation easement donations. The new law:

- Raises the deduction a landowner can take for donating a conservation agreement from 30% of their adjusted gross income in any year to 50%;
- Allows qualifying farmers and ranchers to deduct up to 100% of their adjusted gross income; and
- Increases the number of years over which a conservation easement donor can take those deductions from 6 to 16 years.

The new tax incentives only apply to conservation agreement donations made in 2006 and 2007! The Farm Bill that is currently being debated by Congress could include a continuation of this tax benefit.

Under certain circumstances, families inheriting land can reduce estate taxes by placing a conservation easement on the property within nine months after the decedent owner's death. The equivalent development value of the property given up may then be taken as a charitable deduction against the value of the gross estate.

Estate beneficiaries also can exclude from the taxable estate 40 percent of the land's value up to \$500,000, subject to qualifying conservation easements. For information, consult an independent tax professional experienced with conservation easements.

North Carolina Tax Incentives

There have been some recent changes to the North Carolina tax benefits for conservation easements during the last legislative session. North Carolina offers a tax credit of 25 percent of the fair market value of the donated property interest, up to \$500,000 for corporations and individuals. Any unused portion of the credit may be carried forward for five succeeding years.

The tax credit for the donation of conservation land or a conservation easement must be certified by the NC Department of Environment and Natural Resources and a letter from them attached to the state tax return. Also requires a taxpayer claiming the credit to submit as support for the credit either a self-contained or a summary appraisal report, which are two types of reports defined by Standards rule 2-2 of the Uniform Standards of Professional Appraisal Practice and required to have certain information included supporting the valuation determination. Allows married couples to file separate tax returns and each claim the maximum individual credit.

Local Property Taxes

North Carolina requires county tax assessors to consider the reduction in property value caused by the granting of any conservation agreement. The Donor should apply for a change in the ad valorem tax appraisal of land after an agreement is granted. The tax value is usually not less than the Present Use Value tax.

For more information:

NC Agricultural Development & Farmland Preservation Trust Fund

NC Department of Agriculture & Consumer Services
1001 Mail Service Center
Raleigh, North Carolina 27699-1001
Phone: 919-733-7125
E-mail: ncadfp@ncmail.net
www.ncadfp.org

North Carolina Farm Transition Network

www.ncftn.org

American Farmland Trust

www.farmland.org

Land Trust Alliance

www.lta.org

