

## **CONSERVATION EASEMENTS**

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### **WHAT IS A CONSERVATION EASEMENT?**

A legal agreement (deed restriction) between a landowner and a land trust, municipality, qualified 501(c)3 or government agency that permanently protects land while the landowner continues to own it. Donating an easement can result in reduced income tax, property tax, and estate tax.

#### **Benefits of a Conservation Easement**

##### **To the Landowner...**







- ✓ Possible tax benefits (deduction)(credits in some states)
- ✓ Permanent protection of the natural or productive qualities of their property
- ✓ Protect land from inappropriate development

##### **To the Community ...**

- ✓ Permanent protection of open space (natural areas, agricultural lands, scenic lands) or historic properties
- ✓ Environmental (natural wetlands protection, storm water, wildlife habitat)
- ✓ Enhancement of adjacent properties (public lands, densely developed areas)

#### **How Does It Work?**

Any landowner of record may donate a conservation easement by giving up rights (through a deed restriction) that will achieve the conservation intent. Such rights that may be restricted include:

-  Development- Commercial/Residential/Industrial
-  Surface and/or Subsurface Mining
-  Crop/Cattle Farming
-  Clear-cutting of Timber
-  Subdivision (Smaller Tracts)
-  Commercial Hunting, Fishing, Timber

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📁 Leasing Rights (Long-Term)

### **Requirements to Donate a Conservation Easement**

- 📁 Must meet a conservation purpose
- 📁 Land Trust, Qualified 501(c)3, State/Federal Agency, or Municipality agrees to hold the easement in perpetuity
- 📁 Qualified appraisal to establish value before/after easement
- 📁 Baseline Documentation Report
- 📁 Filed CE Deed at County Courthouse
- 📁 CWA/Donation Letters
- 📁 IRS Form 8283 (Charitable Contributions)
- 📁 Mineral Remoteness Letter (if mineral rights are not owned by donor)
- 📁 Subordination Agreement (if mortgaged)

### **What are the Potential Tax Benefits of Donating a Conservation Easement?\***

1. Income Tax Benefits
2. Estate Tax Benefits
3. Property Tax Benefits

*\*Donation must be perpetual, donated to a qualified organization, and meet IRS test for “conservation purposes”.*

#### **PERPETUAL**

In order for the donation to qualify for income and estate tax benefits, the conservation easement must be a restriction(s) granted in perpetuity on real property and apply to all future owners.

#### **QUALIFIED ORGANIZATION\***

IRS Reg. Sec. 1.170A-14 (c)

- 🏠 A governmental unit
- 🏛️ A charitable organization described in Section


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501(c)3 of IRS code.


*\*They agree to “hold” and monitor the easement in perpetuity. The landowner typically makes a cash gift to the land trust to hold the easement.*

### CONSERVATION PURPOSES

IRS Reg. Sec. 1.170A-14(d)(1)

 *Preservation of land areas for outdoor recreation by, or the education of the general public.*

 *Protection of a relatively natural habitat of fish, wildlife or plants, or similar ecosystem.*

 *Preservation of certain open space (including farm and forestland).*

 *Preservation of historically important land area or certified historic structure.*


### INCOME TAX DEDUCTIONS

**A qualified appraiser** will determine the value of land before and after the conservation easement.


Example:

1000 ac. x \$1,700/ac =	Before Value -	\$1,700,000
1000 ac. x \$700/ac =	After Value -	<u>\$ 700,000</u>
<b>Difference is the Total Charitable Deduction</b>		<b>\$1,000,000</b>

#### **Currently**

-  A Donor may deduct the full value of the donation (up to 50% of Donor’s AGI per year). If donation exceeds 50% AGI the Donor can carry forward the balance of a donation for an additional 15 years.

#### **Farmers/Ranchers (under Enhanced Incentives)**

-  A Donor may deduct full value of the donation (up to 100% of Donor’s AGI per year). More than 50% of Donor’s income must be from farming or ranching to qualify.

## **ESTATE TAXES**

- Owner must donate conservation easement on his property in his lifetime or in a legal will.
- No limits on estate tax donation.
- Can significantly reduce the tax burden to heirs and protect family lands.
- Federal law requires inherited property to be valued at “highest and best use” instead of actual use. A conservation easement that places restrictions on this lowers the property value and estate taxes.

## **PROPERTY TAXES**

A conservation easement may reduce property taxes but in some states like Mississippi, property taxes on agricultural and forestry lands are already reduced because they are based on a property’s productivity rather than fair market value. Conservation easements on lands not already classified as ag/forestry (platted development) may reduce property taxes.

*It is up to the County Tax Assessor to make this determination.*

## **LAWS GOVERNING CONSERVATION EASEMENTS**

- Each state has individually passed legislation addressing conservation easements.
- 1976 Internal Revenue Service Code, *Section 170(h)*