

Conservation Easements
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What is a conservation easement?

A *conservation easement* is a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its values for wildlife, natural habitats, forestry, agriculture, water supplies, historic or cultural features, or scenic open space (Title 27, Chapter 8, SC Code). Most conservation easements are “in perpetuity,” meaning that they are permanent. A conservation easement allows landowners to continue to own and use their land, and they can also sell it or pass it on to their heirs. *It is important to note that a conservation easement does NOT create any right for the public to enter the landowner’s property.*

Ownership of land can be thought of as a “bundle of rights” that comes with the property. The bundle includes, for example, the right to subdivide the property, to cut trees, to farm, and to develop the land. When a landowner donates or sells a conservation easement to a land trust or government agency, he or she gives up some of the rights associated with the land. For example, the landowner may agree to limit the number of subdivisions, prohibit mining, or prohibit commercial development. Typically, a landowner will retain the right to practice forestry (cut trees), hunt, fish, farm in specified areas of the property, and build a limited number of new buildings in specific locations. All future owners will also be bound by the terms of the conservation easement. The land trust or agency holding the conservation easement is responsible for making sure the easement’s restrictions are followed. This is accomplished by inspections of the property, and in rare cases of a violation the holder of the conservation easement can initiate a court action to enforce it.

Conservation easements offer great flexibility. An easement on property that is habitat for rare wildlife might prohibit any development, for example, while an easement on a farm might allow continued farming and the addition of agricultural structures. An easement may apply to all or a portion of a property.

How does a conservation easement qualify for tax incentives?

A landowner may qualify for both federal and state income tax incentives by donating a permanent conservation easement on their property. When a landowner donates a conservation easement, it reduces the fair-market value of the property because the future use of the land has been restricted. If the conservation easement donation meets the requirements of the federal tax code, then it may qualify the landowner to claim a charitable-donation tax deduction on their federal income tax (Section 170(h) of the IRS Code). The value of conservation easements varies greatly; in general, the highest values result from very restrictive conservation easements on developable land under intense development pressure.

In South Carolina, a donor of a conservation easement who qualifies for the federal tax deduction may also qualify for a tax credit against their state income tax (Section 12-6-3515, SC Code). The state income tax credit is limited to 25% of the value of the federal income tax deduction, or \$250 per acre, whichever is less. And, the total amount of the state income tax credit that the landowner may claim in one year is limited to \$52,500. The landowner may sell the income tax credit to another South Carolina taxpayer who can then use it to reduce their state income tax payments.

How can a conservation easement help a family keep its land?

One of the most important benefits of a conservation easement is that it may make it financially possible for a landowner to pass his or her land on to the next generation. All too often, when a landowner dies, the children or heirs of a landowner are forced to sell all or part of treasured family property in order to pay the estate taxes on the land. Because the restrictions in a conservation easement typically lower the land's fair-market value, the easement will also lower the potential estate taxes that must be paid. This can make the crucial difference in the ability of the landowner's children to be able to afford to hold onto the land.

Are conservation easements important in South Carolina?

Yes! South Carolinians have great respect for private property rights. And, they often also have a land ethic that recognizes the intrinsic values of rural properties for hunting, fishing and family traditions, as well as forestry and farming. Conservation easements are a method of conserving land that respects private property rights while encouraging traditional land uses and the heritage of families. They have been widely used to conserve hundreds of thousands of acres of important lands throughout the state.

Conservation easements on private lands provide important benefits for the public and the state – *and at very little cost*. For example, wetlands protected by conservation easements store and clean stormwater runoff. Along the Savannah River several land trusts have been accepting conservation easements that protect many miles of the river's shorelines and floodplain, which directly protects water supply and water quality for downstream drinking water users. By maintaining a critical acreage of working lands, forests and farms conserved by conservation easements help sustain these industries by maintaining the infrastructure of suppliers and buyers necessary to maintain a viable industry. The wildlife that utilizes lands protected by conservation easements are a public trust that does not recognize property lines; sportsmen and wildlife watchers on nearby public or private lands benefit from abundant wildlife populations.

The Nature Conservancy, Ducks Unlimited, Lowcountry Open Land Trust, Pee Dee Land Trust, Upstate Forever, Beaufort County Open Land Trust, Katawba Valley Land Trust and Congaree Land Trust are but a few of the private, non-profit land trusts that are utilizing conservation easements to conserve land throughout South Carolina.