

A Landowner's Guide to
Conservation Easements

Prepared by the Lowcountry Open Land Trust

A Landowner's Guide to Conservation Easements

Prepared by the Lowcountry Open Land Trust

Table of Contents

INTRODUCTION	3
THE CONSERVATION EASEMENT	4
Planning for the Future	
Characteristics of an Easement	
In Perpetuity	
Ownership and Access	
The Restrictions	
The Reserved Rights	
DONATING A CONSERVATION EASEMENT	6
The Donation Process	
Costs and Responsibilities of the Donor	
Baseline Documentation Report	
Easement Stewardship	
FINANCIAL ASPECTS OF DONATING A CONSERVATION EASEMENT	9
IRS Criteria for Conservation Easements	
Potential Tax Benefits	
Federal Income Taxes	
State Income Taxes	
Estate Taxes	
Local Taxes	
CONDEMNATION BY GOVERNMENT AGENCY	12
A CASE STUDY	13
OTHER CONSERVATION OPTIONS	14
CONCLUSION	15

INTRODUCTION



MARGARET P. BLACKMER



TRIPP SMITH

Since 1990, the Lowcountry Open Land Trust has assisted landowners throughout the South Carolina Lowcountry in protecting their land through the voluntary use of conservation easements. As a result, tens of thousands of acres of timber stands and farmland, marshland and swamp, forests and scenic vistas are preserved for future generations to use and enjoy; all of it on private lands under private ownership and control.

More and more landowners are relying on the conservation easement to ensure that their land will remain available for traditional uses such as farming, forestry, hunting and fishing and outdoor recreation. Due to rising market pressures that have encouraged rapid development throughout South Carolina, hundreds of acres of rural lands are lost to suburban sprawl every day. At the same time, conservation-minded landowners are using easements to make sensible and sustainable plans for the future of their property. In many cases, a conservation easement may qualify as a charitable donation, which can result in substantial tax benefits to the landowner.

The Lowcountry Open Land Trust is a qualified non-profit organization, recognized by both the State of South Carolina and the federal government. Governed by a board of trustees and administered by a professional, full-time staff, the Land Trust is one of the leading local land trusts in the Southeast. With its highly focused mission and many years of experience, backed by dedicated members and a strong stewardship endowment, the Land Trust is well-equipped to assist landowners in creating conservation easements, and to safeguard those easements in perpetuity.

THE CONSERVATION EASEMENT

A conservation easement provides a way to preserve the rural and natural character of land while allowing the landowner to maintain considerable control over how to achieve that protection. Each easement is tailored to accommodate both the landowner's needs and the land trust's mission to preserve the conservation values - the natural resources and wildlife habitat - of the land.

More specifically, a conservation easement is a legal contract between a landowner and a land trust that will permanently remove some of the rights to fully develop a property. The easement establishes that:

- 1) The landowner may continue to own and use the property, and make the limited improvements that are listed in the easement, provided that:
- 2) The landowner promises to preserve the conservation values of the property as outlined in the terms of the agreement, and
- 3) The land trust is granted the right to monitor the property and to enforce the terms of the agreement.

Once the easement document has been properly signed, it becomes a permanent attachment to the title. The easement will then transfer with the deed and will apply equally to all future owners of the property, forever.

Because conservation easements are intended to protect forest and farmland, wildlife habitat, historic sites and significant scenic and natural resources, they will in most cases provide a benefit to the public even if the public never sets foot on the property. Once a public benefit is established, an easement may qualify as a charitable donation and provide substantial tax benefits to the easement donor. A more detailed discussion of the *Financial Aspects of a Conservation Easement* is included later in this guide.

PLANNING FOR THE FUTURE

Conservation easements appeal to private property owners who know that the quality of life in the Lowcountry is linked to the beauty and natural character of our landscape and our ancestors' traditional uses of the land. Family land and farmland, in particular, are becoming more difficult to hold in the face of rising real estate values and taxes, and consistently high estate taxes. Rather than leaving the fate of their property to changeable government policies and short-term market forces, landowners and their families – those who know the land best – are taking action themselves to determine the future of their land.

In consultation with attorneys and tax advisors, families can use the process of designing a conservation easement to plan for their land. They can define a legacy for their grandchildren's children by making sure that the opportunities they have been afforded are still available in 20 to 50 years and beyond. In most cases, the love of the land and the desire to preserve its beauty and productivity are the primary motivations of a landowner to donate a conservation easement.

THE CHARACTERISTICS OF A CONSERVATION EASEMENT

In Perpetuity In order for a landowner to claim any federal and state tax benefits from the donation of a conservation easement, the easement must be granted in perpetuity; that is, it must be perpetual, or last forever. As a result, the terms of a Land Trust easement are designed to apply to all present and future owners of the land.

Ownership and Access The landowner retains ownership of the land along with the associated responsibilities and liabilities. Only those rights and uses that he donates through



CHRISTOPHER WALTER

an easement are removed from his ownership. He can live on the land, continue to use the land, and transfer ownership through sale or by will.

An easement can be designed to provide public access if that is the intent of the landowner. Easements donated to the Land Trust, however, have not included any such requirement. Even without public access, the IRS usually considers the donation of an easement on private lands as a charitable deduction. Access, however, must be granted to the Lowcountry Open Land Trust in order to allow for its monitoring and enforcement responsibilities, and this is discussed further in the *Easement Stewardship* section of this guide.

The Restrictions Simply put, a conservation easement is a restriction on the use of a property accomplished by donating certain rights to a land trust. The terms of the easement are mutually defined by the easement donor and the Lowcountry Open Land Trust, and vary according to the needs of the landowner, the characteristics of the land, and the conservation objectives identified by the land trust. In addition, if the landowner is inter-

ested in qualifying for income tax benefits, then the easement must meet some basic IRS guidelines that are discussed in the *IRS Criteria* section of this guide.

A conservation easement can include almost any kind of restriction agreeable to both parties. In general, a Land Trust easement will not allow industrial or heavy commercial activities and will limit both subdivision and the construction of new structures. An easement can even provide that the land must be left completely in its natural state, should that be the desire of the landowner. Not only can an easement be applied to several parcels of land at once, it can also be applied only to a portion of an existing tract.

A typical Land Trust easement might include these restrictions:

- ❖ No industrial uses or structures.
- ❖ No commercial uses other than those related to farming and timber management, as well as other low-impact uses such as nature-based tourism, operation of a bed and breakfast, lease of the property or of hunting rights, and certain home-based businesses.
- ❖ Restrictions on the number of subdivisions.
- ❖ Limitations on the number, size and location of new houses.
- ❖ Limitations on the number and size of new structures related to agriculture, timber management and recreational uses.
- ❖ Limitations on the number, size and location of docks.
- ❖ Limitations on the construction and design of new roads.
- ❖ Limitations on any alteration to the topography and hydrology of the land.
- ❖ Limitations on alterations to the vegetation along waterways, wetlands and public roads.
- ❖ Protection of wetlands, significant trees, endangered species and their habitat.

Since an easement is specifically tailored to each property, this is not a comprehensive list of possible restrictions, nor will all of these be appropriate for every property.

The Reserved Rights The landowner retains all rights in the property other than those specifically removed or restricted by the conservation easement. Generally, these include the rights to privacy, to convey ownership, to continued recreational activities and to generate income from traditional and sustainable uses of the land.

The following is a list of some rights a landowner may retain in a typical Land Trust easement:

- ❖ To farm and manage timber in order to generate income.
- ❖ To pursue low-impact commercial activities such as a home-based business, cottage industries, nature-based tourism or a bed and breakfast.
- ❖ To hunt, fish and pursue other minimum impact recreation uses.
- ❖ To maintain managed wetlands, ponds and impoundments.
- ❖ To manage wildlife and habitat.
- ❖ To lease, sell, or otherwise transfer ownership.

These reserved rights are intended to allow residential and recreational uses, as well as limited economic uses of the property while protecting the conservation values of the land. A conservation easement should not be so restrictive – should not remove so many opportunities to generate revenue from the land – that it could make the land a financial burden on present or future owners.

DONATING A CONSERVATION EASEMENT

If a landowner is interested in pursuing a conservation easement, he should begin talking to representatives of the Land Trust in the spring of the year that the easement is to be completed. Because the tax year for most people ends on December 31, the final quarter of the year is a busy time for the Land Trust. For this reason it is very difficult to complete a conservation easement by year-end if the project is initiated in this period.



MARGARET P. BLACKMER

THE DONATION PROCESS

In most cases, a landowner should expect the easement design process to take at least five to seven months, assuming that all owners are in agreement at the outset. This length of time is necessary for several reasons. First, the Land Trust staff will visit the property to evaluate its conservation values, and to discuss the current uses and the landowner's future intentions for the property. A preliminary report must then be presented to the Land Trust Board of Trustees to gain approval to proceed with the project. The second phase is the negotiation of easement terms – a process that defines the list of what will and will not be allowed to happen on the property. This process begins when the Land Trust staff generates a preliminary draft of the easement

document, which will be passed back and forth between landowner and Land Trust staff. Because these decisions will affect the land forever, the landowner should take the time to consult an attorney, appraiser, forester or other advisors to ensure that the easement protects both the land and his long-term interests. When an agreement has been reached, the Land Trust Board must review and approve the final easement. The final phase involves primarily clerical work, such as reviewing title to the property, creating a property description, obtaining a subordination agreement if a mortgage is involved, and creating the Baseline Documentation Report. Once these issues are settled, the easement can be signed and recorded in the county land records office. It should be stressed that a conservation easement is entirely voluntary, and that the landowner has the option to suspend negotiations up until the point at which the easement is signed.

COSTS AND RESPONSIBILITIES OF THE EASEMENT DONOR

Because of the permanent nature of a conservation easement, the Lowcountry Open Land Trust recommends that the landowner review the draft easement with knowledgeable professionals before signing. The Land Trust cannot be expected to have all the necessary expertise in such fields, and the inclusion of advisors in the easement donation process will ensure that the landowner's best interests are served. The landowner should expect to negotiate the professional fees directly with their advisors. It is not uncommon for a landowner to consult with the following professionals:

- ❖ **Attorney:** A real estate attorney will be needed to provide the legal description of the property, and to verify a clear title to the land. It is the recommendation of the Land Trust that the donor have an attorney who is familiar with conservation easements, and who can look out for the landowner's best interests.
- ❖ **Appraiser:** If the landowner intends to apply to the IRS for an income tax

deduction, an appraisal will be required. If no tax benefits will be sought, an appraisal is unnecessary.

- ❖ **Accountant:** The landowner's accountant can provide advice on income tax implications of the easement donation. The taxpayer (landowner) is ultimately responsible for the tax report he files.
- ❖ **Estate Planner:** If the conservation easement is expected to reduce the value of the land for estate tax purposes, the assistance of an estate planner or tax attorney is recommended.
- ❖ **Surveyor:** It is necessary to identify the boundaries of the property being put under easement. In most cases, a new survey will not be a required component of an easement, as an existing plat can often be updated to facilitate an accurate property description.
- ❖ **Timber Consultant:** If a property is managed for timber, a forester can provide valuable advice in designing the timber restrictions contained in an easement. Advice may be available at no cost to the landowner from the South Carolina Forestry Commission.
- ❖ **Wildlife Manager:** Similarly, if the property is actively managed for wildlife, a wildlife biologist can assist in the design of the easement terms. Advisors are available at no cost to the landowner from South Carolina Department of Natural Resources and from the United States Fish and Wildlife Service.

The costs of staff work - site visits, technical support and easement drafting - are borne by the Land Trust. However, it is appropriate for an easement donor to contribute to the Land Trust's Stewardship Fund. This is a separate account that is used solely to protect and preserve existing easement lands. A contribution to this fund helps the Land Trust fulfill its perpetual obligation to the easement, assuring the donor's wishes to protect his property forever. This contribution can be made all at once, in several stages, or it can be made by will.

In addition, it is important for easement donors to become regular members of the

Land Trust in order to be included in programs and events, and to remain informed about conservation projects in their neighborhood. Thus, they can participate in landscape-wide conservation, which will only enhance the significance of their own easement property.

Because of our IRS status as a 501 (c)(3) organization, contributions to the Lowcountry Open Land Trust are generally tax deductible.

BASELINE DOCUMENTATION REPORT

Before an easement is signed, or shortly thereafter, the existing conditions of the property are recorded in a document called the Baseline Documentation Report, or "BDR". Not only is

the BDR required by the IRS in cases where an easement donation will be submitted for tax benefits, it provides a valuable inventory of a property's current characteristics by which future activities and uses can be measured. In most cases, the BDR is directly referenced in the easement document itself, often in several places. For these reasons both the landowner and the Land Trust must approve the BDR for it to be valid.

The Baseline Documentation Report contains detailed property information in the form of maps, photography and text. Maps should include property boundaries, topography, land cover, locations of existing roads and structures, and a current aerial photograph. Photography is used to document the characteristics and extent of habitat and land cover types, current uses and structures. Additionally, the BDR will include a copy of the forest management plan (if applicable), the easement document itself, and whatever else may be needed in order to accurately and completely define the conditions at the time of signing. All of this information is gathered on the property, computerized, indexed and cross-referenced, and copies provided to both parties.



*W*andering thus, away from the main highways, a man wins slowly, slowly understanding of the

Low-Country. Its loveliness takes hold on

him quickly; its colours, which are most of them the softer tints, yet brilliant; its fragrances of swamp bay, of magnolia, of broomgrass, of salt

marshes; its sweeps of distance, green or misty purple or golden; its voices. These are infinitely varied; he will remember longest, perhaps, the low unearthly song of the pines.

—HERBERT RAVENEL SASS, 1932



CHRISTOPHER WALTER

EASEMENT STEWARDSHIP

The term "stewardship" is used by the Land Trust to describe any activity following the



MARGARET E. BLACKMER

signing of an easement that has to do with upholding the restrictions, purposes and intent of the conservation easement. This term covers a broad range of activities that usually fall into one of three main categories: monitoring, enforcement, and education.

In order to meet its responsibilities to the agreement made with the original donor, the Land Trust must periodically have access to the property in order to monitor the terms of the easement. In most cases, the Land Trust will visit an easement property no more than once every year, following sufficient notice by either telephone or letter. After each annual monitoring visit, the

landowner can expect a copy of the monitoring report for their records. In addition to the annual visit, the Land Trust keeps up informal contact with the landowner throughout the year. There may also be requirements in the easement for the landowner to either notify or obtain the approval of the Land Trust prior to certain activities. In fact, a majority of our easement landowners will get in touch with us before they undertake any large-scale project on the property, even if not required by the easement. This process keeps the Land Trust informed of activities on the property and can often help to avoid misunderstandings.

In the rare event that an annual visit should turn up an activity or use that may contradict the easement, the Land Trust will promptly contact the landowner in an attempt to resolve the issue amicably. The easement document specifies the specific procedure to be followed in the event of a legal dispute, includ-

ing measures short of going to court. Legal action is a very rare occurrence. In the vast majority of cases, a violation of the easement occurs out of a simple misunderstanding of the easement terms and can be corrected with a minimum of effort on both sides. If a mutually satisfactory arrangement cannot be found, the Land Trust is obligated to defend any clear violation to either the terms or intent of the agreement, and can be counted on to do so.

Because easement properties change hands – whether through inheritance or by sale – the Land Trust must educate successive owners about the conservation easement they have acquired with their land. It is essential that the Land Trust uphold the intent of the original donors regarding the conservation values of the land, and this can best be accomplished if future owners are committed to the easement. New owners must recognize that the conservation easement is as much a feature of the property as a wetland or a forest.

FINANCIAL ASPECTS OF DONATING A CONSERVATION EASEMENT

The monetary value of an easement is the market value of those rights that are donated to the land trust. An appraiser will determine this value by calculating the difference between the property's fair market value with and without the easement restrictions. It is the result of this calculation that will be reported to the IRS and S.C. Department of Revenue. The specific value of a given easement, however, will depend on the location and characteristics of the property, the surrounding area, and the extent of restrictions placed on the land by the easement. Generally, a more restrictive easement will produce a higher value. Determining whether an easement qualifies for the available tax benefits and acquiring an appraisal are the responsibility of the landowner. It is important to find an



*I*t has not been transformed and standardized by development; it is still a green oasis of wild nature, the home of abundant wild life.

—HERBERT RAVENEL
SASS, 1932

appraiser who has experience with the complexities of appraising a conservation easement in order to ensure the accuracy of the “before easement” and “after easement” value of the property. These values will determine the amount of tax benefit claimed by the easement donor and reported to the IRS on Form 8283.

IRS CRITERIA FOR CONSERVATION EASEMENTS

The following is a summary of the IRS regulations relating to conservation easements. For a complete and accurate interpretation of the regulations governing conservation easements, you should refer to those regulations or consult a tax professional. Please be aware that the Land Trust can not provide you with legal advice as to whether a proposed gift of an easement qualifies for income or estate tax benefits.

A conservation easement that meets the IRS criteria of a “qualified charitable contribution” is generally eligible for both federal and South Carolina income tax benefits. To qualify as such, a conservation easement must be donated voluntarily and must meet at least one of the following four conservation purposes:

1. The preservation of land areas for outdoor recreation by, or the education of, the general public.
2. The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem.
3. The preservation of certain open space, including farmland and forestland, where such preservation is for the scenic enjoyment of the general public.
4. The preservation of a historically important land area or a certified historic structure.

Historically, a majority of the easements donated to the Lowcountry Open Land Trust meet either criterion 2 or 3 or both.

Furthermore, the conservation easement must have been donated to a “qualified conservation organization”. Most non-profit organizations dedicated to land conservation (i.e. land trusts) that qualify as a 501(c)(3) organization, as well as certain governmental agency such as the S.C. Department of Natural Resources, will meet this definition. The Lowcountry Open Land Trust satisfies the requirements for such an organization.

POTENTIAL TAX BENEFITS

The following discussion is a simplification of state and federal tax laws that should introduce the landowner to potential tax benefits for the donation of a conservation easement. It is not intended to be a legal document nor is it intended to render legal advice. A landowner should always seek his or her own independent legal and financial advice.

Federal Income Taxes In general, upon the donation of a qualified conservation easement, the donor may claim an income tax deduction in the year of the donation based on the value of the easement as determined by a qualified appraiser. As a general rule, the amount of this deduction that can be claimed in any one year is limited to 30% of the donor’s Adjusted Gross Income (AGI), but the remaining unclaimed value of the easement can be carried forward over for the next five years, or until

the full value of the easement has been used up. In many cases, the income tax benefits associated with an easement donation can be quite significant, which is why the Lowcountry Open Land Trust recommends that a prospective easement donor enlist the advice of an expert. For instance, some landowners have staged the protection of their lands by donating easements on successive portions of their land over time, thereby extending their tax savings. Other landowners time their donation to correspond to fiscal

years when significant capital gains are anticipated from, say, the sale of a business.

State Income Taxes As of June 1, 2001, the South Carolina Conservation Incentives Act of 2000 establishes a state income tax credit for landowners for the voluntary donation of lands or conservation easements. In order to qualify for the credit, the donor must be a South Carolina taxpayer and must qualify for and claim a federal income tax deduction for a qualified conservation easement. The amount

of the credit is equal to 25% of the value of the conservation easement. The amount of the credit is capped at \$250 per acre and the taxpayer may not use more than \$52,500 of the available credit in any one year. Any unused credit, however, may be carried forward indefinitely. Moreover, if certain requirements are met, the credit may be sold, gifted or bequeathed.

Estate Taxes Landowners can also use conservation easements as a major component of their estate plans, reducing the amount that their estates have to pay in estate taxes. This is especially valuable for families that have land as a significant portion of their net worth. Conservation easements reduce the taxable portion of the estate by reducing the fair market value of the land. During the year 2001, the estate tax rate starts at 37% for estates valued, after applying the Unified Credit (similar to the income tax "standard deduction"), at more than \$500,000, and quickly increases to a rate of 55% for assets exceeding \$3 million. By reducing the market value of the asset, a



TRIPP SMITH



TRIPP SMITH

landowner can reduce the taxable portion of their estate.

The American Farm and Ranch Protection Act, as amended in 2001, further increases the estate tax relief associated with conservation easements. In addition to the tax savings that result from reducing the fair market land value, this new law can exempt 40% of the value of land under a conservation easement from the calculation of estate taxes. The combination of the market value reduction and

the 40% exemption may significantly reduce potential estate taxes. Because estate taxes can often force the sale of inherited land, this should be a serious consideration for any landowner who intends to pass family lands on to his children.

To increase the opportunity to reduce burdensome estate taxes on family lands, the IRS regulations will even recognize a conservation easement that is donated by the executor of an estate. This provision provides the family with options without any obligations, and leaves the family with additional flexibility.

Local Taxes Because a conservation easement reduces the market value of a property through permanent use restrictions, it may help to lower property taxes as determined by the county assessor.

CONDEMNATION BY GOVERNMENT AGENCY

While a properly designed and executed conservation easement will protect land from unwanted development, it will generally not protect the land from legal condemnation by federal, state or local governmental agencies. The power of eminent domain is generally supreme regardless of the number of private covenants, easements or other devices the landowner may use to attempt to protect the property. Although the Land Trust is not an advocacy organization, if it has an interest in a property through a conservation easement, it can join with the landowner to oppose condemnation. The landowner and the Land Trust are partners in this effort.

A CASE STUDY

In order to illustrate the admittedly complex concepts that revolve around conservation easements and the process of donation, the following is a hypothetical case of a Lowcountry landowner who donates an easement to the Lowcountry Open Land Trust.

Anne and Tom Henderson own 250 acres of Lowcountry forest and farmland with nearly one-quarter of a mile of waterfront along a tidal creek. The Henderson family uses the old house along the waterfront at “Tidewater” as a weekend retreat, and occasionally hunts the fields and forest. They manage 100 acres of their land in stands of naturally regenerating pine forest, which they selectively cut for saw timber in order to generate a modest revenue. They lease another 100 acres to a local farmer who grows and sells vegetables. Another 40 acres are wetlands, which abound in wildlife; the remaining ten serve as the grounds and gardens around the main house.

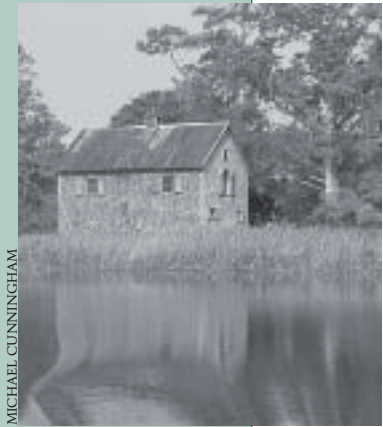
Much of the land not far from the Henderson place is being sold for development and in the last 25 years, the Hendersons’ land has increased in value from \$500 per acre to an average of \$10,000 per acre, with the waterfront property valued even higher. The Hendersons’ taxes have risen considerably over this period, and developers call frequently with handsome offers to buy the property.

But Anne and Tom and their two children love the land and want to continue using it as they have in the past, with hopes of passing it on, intact, to future generations of Hendersons. Fortunately, over the last few years, some of their immediate neighbors have donated conservation easements to the Lowcountry Open Land Trust, protecting nearby waterfront, forest and farmland. This gives the Hendersons the security of knowing that together, they and their neighbors can protect a substantial portion of the river in which they boat, fish and swim, as well as a substantial portion of land for traditional agricultural and recreational uses.

So the family gathers to talk about how they can protect Tidewater, and also how they can meet their financial needs. They decide to meet with the Lowcountry Open Land Trust to find out more about how a

It is a wild, beautiful, fascinating region; but its wildness is not that of the primitive wilderness; its loveliness is not wholly that which nature gave it... here a strange human loveliness is superimposed upon the loveliness of nature—a man-made loveliness which has taken nothing of nature’s beauty from her but, on the contrary, has added to it.

—HERBERT RAVENEL SASS, 1932



residences for family members and ensures that traditional agricultural, timber management and recreational uses can continue.

By donating this conservation easement, the Hendersons reduce the fair market value of Tidewater from \$2.5 million to \$1.5 million, according to a qualified appraisal. Thus, the conservation easement is valued at \$1 million (the difference between fair market value with and without the easement). The Hendersons' accountant has advised that the easement donation meets all of the IRS criteria, and so the family is entitled to a deduction on their federal income taxes. If the Hendersons' average annual income is \$400,000, then they can claim a deduction of \$120,000 (30% of their income) in the year of the donation. In the following five years, the Hendersons can carry forward the remaining unclaimed value of their easement donation. That is, if their annual income remains the same, they can claim deductions of \$120,000 each year for the next five years, for a total of \$720,000 in federal tax deductions.

Since the Hendersons' donation qualifies with the IRS, not only will this deduction be reflected in their S.C. income tax return, but they are also eligible for the South Carolina income tax credit. This credit is calculated at 25% of the value of the easement, which would be \$250,000; the \$250 per acre cap, however, gives the Hendersons an S.C. income tax credit of \$62,500. The Hendersons may apply a maximum of \$52,500 of this to their tax bill in the first year, and the remainder in subsequent years.

In addition, because the conservation easement reduces the market value of the land, it will also reduce the estate taxes that would be due to the IRS when the property passes to the children. Assume that the value of the Henderson's estate, not including Tidewater, is \$250,000. Without the easement, the entire estate is valued at \$2.75 million dollars and would be subject to approximately \$322,500 in state and federal estate taxes if the children were to inherit in 2002*. With the easement, the estate value drops to only \$1.75 million. The additional estate tax relief provided by the American Farm and Ranch Protection Act would further reduce the value of Tidewater by

up to \$500,000 for estate tax purposes, leaving a taxable estate value of only \$1,250,000. Applying the 2002 federal and South Carolina estate tax exemptions for their taxable estate allows the Hendersons to reduce the estate taxes their children would have to pay in 2002 from \$322,500 to \$0.

Best of all, this conservation-minded family can rest assured that Tidewater will forever remain rural, and that its natural character, productivity and beauty will be preserved for the generations that follow.

**Note: The exact amount of estate tax due will depend on the year of death.*

OTHER CONSERVATION OPTIONS

While conservation easements have proved to be useful and versatile tools for hundreds of Lowcountry landowners, they are not the only way to protect conservation values and ensure traditional uses. In some cases, an easement may not best suit a landowner's needs. Other options that can produce desirable long-term conservation and financial solutions include the following:

Fee-Simple Donation: Under this strategy, all interest in the property is gifted to a land trust or other conservation organization and the charitable contribution reflects the full value of the property.

Bargain Sale: This strategy involves the sale of a property, but for a sum that is below market value, where the difference between sale price and market value determines the charitable contribution.

Life Estate: Under this option, a remainder interest in the property is donated to a land trust, but a designated family member is given the right to live on and use the property until their death, at which time the land trust acquires full ownership.



TRIPP SMITH

CONCLUSION

More and more South Carolina Lowcountry landowners are finding conservation easements to be an effective tool to ensure permanent protection for their land against inappropriate development, without giving up the rights of ownership and enjoyment. Because of the significant tax incentives, landowners can also use easements to preserve family lands and transfer property intact to children and grandchildren, without forcing each successive generation to sell off a portion of the land to pay estate taxes.

The conservation easement provides a voluntary and flexible means of protecting private property for the public good. The easement is a pro-active, “win-win” approach that safeguards the important resources and features of the land, while generating financial and tax benefits to the property owner as compensation for their gift. Most importantly, easements provide a permanent, legal framework to further the enduring land stewardship ethic that is a characteristic among landowners of the South Carolina Lowcountry.

Conservation easements can help build a lasting land legacy for future generations of South Carolinians.

Donation by Will: This option allows either the donation of an easement or of the entire property to a land trust at the time of the landowner’s death.

While not an exhaustive list, these options and many others have been used to successively meet landowners’ desires for conservation and protection. To learn more about these options, please contact your tax advisor or the Lowcountry Open Land Trust.

For more information about conservation easements, or to learn how to make a donation, please contact the Lowcountry Open Land Trust.



485 East Bay Street, Charleston, S. C. 29403

Tel: 843.577.6510 Fax: 843.577.0501





Lowcountry Open Land Trust

485 East Bay Street
Charleston, S. C. 29403

Tel: 843.577.6510

Fax: 843.577.0501

Website: www.lolt.org