



IS A CONSERVATION RIGHT FOR YOU AND YOUR LAND?

A conservation easement, also called a conservation agreement, is a voluntary and legally binding agreement between a landowner and a qualified land trust, such as Conservation Foundation of the Gulf Coast, or government agency. When a landowner donates or sells an easement to a land trust or public agency, they are giving up some of the rights associated with the land. Thus, the easement *permanently* limits uses of the property in order to protect its conservation values, as specified in the Internal Revenue Code (IRC) 170(h) (see page 5).

Conservation easements offer private landowners flexibility in protecting their land. For example, a landowner can retain the right to graze livestock, hunt and fish, live and recreate on the land while, at the same time, relinquishing the right to build additional structures. On large properties, the landowner may even retain the right to build additional agricultural and/or residential structures or exclude some of the land from the conservation easement restrictions.

The land trust, or government agency that holds the conservation easement, is responsible for making sure that the landowner adheres to the easement terms. An easement may apply to all or a portion of a property and may or may not allow for public access to the property. The landowner of a conservation easement can sell the land or pass it on to heirs, and all future owners of the property are bound by the terms of the easement, *in perpetuity*.

Easements vary greatly in value. In general, the highest easement values are found on tracts of open space under high development pressure. In some rural areas with limited development potential, placing an easement on one's land may also result in property tax savings for the landowner. The value of the conservation easement is determined through appraisals prepared by qualified appraisers and must meet IRS requirements. The value of the conservation easement is the difference between the current, highest and best use of the land based on current land use regulations (not speculative values based on hypothetical development scenarios) and the value of the land subject to the agreed upon restrictions in the easement. This is the value of the rights being donated or sold that may be eligible for income tax benefits, cash, or a combination of the two.

If a conservation easement is voluntarily donated to a land trust or government agency, or sold at a price below fair market value (called a bargain sale), and if it benefits the public by permanently protecting important conservation resources, it can qualify as a charitable tax deduction on the donor's federal income tax return.

In 2015, Congress made the "enhanced" income tax incentive for conservation easements a permanent part of the IRS tax code. This law increased the tax benefits to landowners by allowing a donor to take a deduction of up to 50% of their annual income beginning in the year of the gift with *15 years of carry-forward* until it is fully used.

WHICH CONSERVATION EASEMENT PROGRAM MIGHT WORK FOR YOU AND YOUR LAND?

In addition to significant tax benefits associated with the donation of a qualified conservation easement to qualified non-profit land conservancies, such as Conservation Foundation of the Gulf Coast, there are Conservation Easement Purchase Programs at the local, state and federal government agencies.

A. State of Florida

1. Florida Forever

Florida Forever is Florida's premier **conservation and recreation lands** acquisition program administered by the Department of Environmental Protection (DEP). Florida Forever supports a wide range of goals: Increasing and protecting Florida's biodiversity; Connecting and buffering existing state lands; Restoring environments; Protecting water supplies and resources; Increasing public access; Sustainably managing forests; and Protecting cultural and historic resources. The program acquires land as well as conservation easements that protect regional and state-wide resources of significance. Projects are approved and ranked by the Acquisition and Restoration Council (ARC) with final approval by the Governor and Cabinet. Conservation Easements are held and monitored by DEP.

2. Rural & Family Land Protection Program (RFLPP)

RFLPP is an **agricultural land preservation program** and is administered by the Florida Dept. of Agriculture and Consumer Affairs (DACCS). It is designed to protect important agricultural lands through the acquisition of permanent agricultural land conservation easements. RFLPP coordinates with farmers and ranchers to ensure sustainable production practices while reasonably protecting natural resources without interfering with agricultural operations and their continued economic viability. Projects are reviewed and ranked through a formal process by the Rural and Family Lands Protection Program Selection Committee and approved by the Governor and Cabinet.

B. Federal: U.S. Department of Agriculture (USDA), Natural Resource Conservation Service (NRCS)

1. Agricultural Land Easements (ALE) protect agricultural viability by helping partners (private and tribal landowners, land trusts, and other entities such as state and local governments) protect croplands and grasslands on working farms and ranches by limiting non-agricultural uses of the land through permanent conservation easements. The conservation easements prevent conversion of productive working lands to non-agricultural uses. Land protected by agricultural land easements may have additional public benefits, including environmental quality, historic preservation, wildlife habitat and protection of open space. NRCS may contribute up to 50% of the fair market value of the agricultural land easement. The remaining 50% maybe be a bargain sale donation or funded by a different yet compatible funding program (such as Florida's RFLPP). The program also protects grazing uses and related conservation values by conserving grassland, including rangeland, pastureland and shrubland. The easement is held, monitored and enforced by a qualified public agency (state or county) or qualified land trust.

2. *Wetland Reserve Easements* (WRE) help private and tribal landowners **protect, restore and enhance wetlands** which have been previously degraded due to agricultural uses and provide habitat for migratory waterfowl and other wetland-dependent wildlife and provide water quality benefits. All landowners (including all members of landowner-legal entities) must meet the adjusted gross income (AGI) limitations. Land eligible for wetland reserve easements includes privately held farmed or converted wetlands that were previously degraded due to agricultural uses and can be successfully and cost-effectively restored. NRCS holds and monitors the conservation easements and undertakes wetlands enhancements and restoration. Cattle grazing is only permitted as a management tool and may result in a reduction in easement funding.

C. Sarasota County

Environmentally Sensitive Lands Protection Program (ESLPP) and Neighborhood Parkland Acquisition Program (NPP)

These voter-approved and taxpayer-funded programs acquire and protect **natural lands and parklands**. The criteria considered for environmental acquisitions are: Rarity, Quality, Connectivity, Manageability, and Water quality benefits. Conservation easements may be purchased on natural and agricultural lands provided the purpose is to protect and enhance the natural resources on the property (versus protecting agricultural viability). Sarasota County holds, monitors, and enforces the conservation easements.

**Other Counties in our region have funding for land conservation. However, at this time, most of the funds are being used for the purchase of land for public recreation and protection of important natural resources rather than purchase conservation easements on agricultural land.

CONSERVATION EASEMENT STRATEGIES

	Conserve Natural Resource	Protect/Require Ag Use	Cash	Tax Benefits	Easement Holder/Manager	Timing
DONATION of CE to qualified entity (i.e. CFGC)	Flexible	Flexible		Yes - value of CE	CFGC or other qualified non-profit or public agency	Quick
FUNDING PROGRAMS						
A. State of Florida						
1. <i>Florida Forever</i>	Primary		Up to 100% of CE value - negotiated	Yes w/Bargain Sale	Dept. of Environmental Protection	1-3 years
2. <i>Rural & Family Lands</i>	Secondary	Primary	Up to 100% of CE value - negotiated	Yes w/Bargain Sale	Dept. of Agriculture and Consumer Affairs	~1 year
B. USDA - NRCS						
1. <i>ALE</i>	Secondary	Primary	Up to 50% of CE appraisal value	Yes w/Bargain Sale	Partner - land trust or other government agency	2+ years
2. <i>WRE</i>	Primary		Up to ~75% of CE value - negotiated	Yes w/Bargain Sale	NRCS	2+ years
C. Sarasota County - <i>ESLPP</i>	Primary		Up to 100% of CE value - negotiated	Yes w/Bargain Sale	Sarasota County	~1 year

Tax Benefits for Donations of Land and Conservation Easements

Tax benefits for conservation easements or other donations are unique to each taxpayer's situation and depend on many factors including donation value and the donor's adjusted gross income.

Conservation Foundation does not provide tax advice to landowners and highly recommends that landowners consult their financial advisors when considering potential or actual tax benefits of conservation easements.

Tax Incentives for Donating a Conservation Easement

There are several significant tax incentives for donating a conservation easement in Florida. Conceptually, an easement reduces the development potential of a property, thereby decreasing its market value. Since resource conservation, even on private land, is in the public interest, the market value of that reduction may be considered as a charitable donation by the IRS and by the State of Florida. In general, the IRS allows the donor of a qualified conservation easement given in after 201 to take an income tax deduction for as much as the full value of that donation, limited to 50% of the donors adjusted gross income (100% for farmers), over sixteen years.

A conservation easement may also significantly reduce land values and therefore reduce the estate taxes that must be paid by the heirs of an estate. This benefit is especially valuable for families that have land as a significant portion of their net worth.

In addition, Florida Statute 196.26 provides for property tax exemptions for lands protected by conservation easement under certain circumstances.

Conservation Contributions

A charitable income tax deduction will be available for the donation of a conservation easement only if it constitutes a "**qualified conservation contribution**," as defined by Internal Revenue Code §170(h), and as interpreted by Treasury Regulation §1.170A- 14. The Code and Regulations define "qualified conservation contribution" to mean:

A. A "Qualified Real Property Interest" --

- The donor's entire interest in the property.
- A remainder interest (personal residence, farm or conservation property).
- A perpetual conservation restriction.

B. Conveyed to a "Qualified Organization" --

- Governmental unit (U.S., State and political subdivisions), public charity, or supporting organization.

- With the commitment to protect the conservation values and the resources to enforce the restrictions.

C. **Exclusively for conservation purposes** -- Four recognized categories --

- 1) Preservation of land areas for outdoor **recreation or education of the public**.
 - “Substantial and regular use of the general public”
- 2) The protection of a relatively natural **habitat of fish, wildlife, plants, or similar ecosystem**.
 - Rare, endangered or threatened species
 - Natural areas which are high quality examples of a terrestrial or aquatic community
 - Natural areas included in, or which contribute to the ecological viability of a local, state, or federal park, preserve, refuge, wilderness area, or similar conservation area.
- 3) The **preservation of open space** (including farm and forestland) where preservation fulfills either the "scenic enjoyment" or the “governmental policy” test **and** the “significant public benefit” test.

Scenic Enjoyment. Preservation of the property as open space is for the scenic enjoyment of the general public:

- Development of the property would impair the scenic character of the local landscape or would interfere with a scenic panorama that can be enjoyed from one or more (usually public) locations, and the location(s) is open to or used by the public. (See Treas. Reg. §1.170A-14(d)(4)(ii)(A) for a list of some factors to consider with regard to ascertaining "scenic character.")

OR

Governmental Policy. Preservation of the property as open space is pursuant to a clearly delineated federal, state or local governmental conservation policy:

- This criterion is fulfilled by projects that further a specific, identified conservation project, such as the preservation of land within a state or local landmark district that is locally recognized as being significant to that district; preservation of a wild or scenic river; or the protection of the scenic, ecological or historic character of land that is contiguous to, or an integral part of, the surroundings of existing recreation or conservation sites.
- Programs providing preferential tax assessment or preferential zoning for conservation purposes constitute significant commitment by the government.
- "Clearly delineated governmental policies" in the Florida context might include: lands enrolled or eligible for enrollment in the current use program; lands within a designated scenic highway corridor; conservation zones identified by a local town plan or zoning ordinance; sites identified by the Florida Heritage Program;

AND

Public Benefit. Preservation will yield significant public benefit. Consider such factors as:

- Uniqueness of the property to the area.

- The likelihood that development of the property would lead to or contribute to degradation of the scenic, natural, or historic character of the area.
 - The opportunity of the general public to use the property or to appreciate its scenic values.
 - The importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area.
 - The likelihood that the donee [land trust] will acquire equally desirable and valuable substitute property or property rights [presumably referring to neighboring properties].
- 4) Preservation of an **historically important land area or a certified historic structure.**
- “Land areas” include lands adjacent to National Register properties that contribute to historic integrity, land within a registered historic district, and other lands that meet national register criteria.
 - “Certified structures” include those listed on the National Register and those located within a registered district (if certified as being of historic significance to the district).
 - Regular opportunity for public view and limitations on development are required.

Other Limitations. The following miscellaneous limitations apply to all conservation restrictions:

- 1) The conservation easement cannot run afoul of the "inconsistent use" limitations set forth in Treas. Reg. §1.170A-14(e)(2).
- 2) The conservation easement must be enforceable in perpetuity as provided in Treas. Reg. §1.170A-14(g).
- 3) The conservation easement cannot permit the landowner to retain certain qualified mineral interests as provided by Treas. Reg. §1.170A-14(g)(4).
- 4) The easement donor must make available to the Land Trust documentation material sufficient to establish the condition of the property at the time of the gift as provided in Treas. Reg. §1.170A-14(g)(5)
- 5) The easement must be transferable only to another "qualified organization" as provided by Treas. Reg. §1.170A-14(c)(2).