



The Spartanburg Area Conservancy
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Donating land for conservation purposes is truly one of the finest legacies a person can leave to future generations.

There are steps you can take to protect your land. Working with a land trust, such as SPACE (private, nonprofit conservation organization) there are many ways you can save your land – but only if you make plans.

Conserving your land makes good financial sense, and more importantly gives you the peace of mind that your land will be protected for your children and future generations.

What types of land does SPACE protect?

The Spartanburg Area Conservancy is organized to protect and preserve natural areas of ecological, historical, and aesthetic value to enhance the quality of life for all residents and future generations.

Because SPACE has been granted appropriate federal tax status, we can offer tax incentives to many people who protect open land. At the same time, we also have a legal and ethical obligation to be sure that our land protection programs result in real public benefits, and that the land protection obligations, which SPACE assumes in perpetuity, can be carried out. Therefore, we evaluate every potential project with great care.

To qualify for consideration for land protection by SPACE, a site must be able to be justified as having value in one or more of the following eight categories:

1. Lands that contain endangered, threatened, or rare species or natural communities.
2. Wetlands, floodplains, or other lands necessary for the protection of watersheds.
3. Lands of historical value, or adjacent to lands of historical value, and that are necessary for the protection of the items of historical interest.
4. Lands that have the potential to be a part of community greenway systems.
5. Lands that contain exemplary ecosystems or natural features. (Example: old growth hardwood forests, migratory waterfowl wintering area)
6. Land that is valuable to a community as open space due to its proximity to developing areas or its prominent position in how people perceive their community. (Example: open fields on a major thoroughfare at the entrance to a town, or greenspace on a highly developed stretch of land.)
7. Lands of agricultural or forestry significance
8. Lands that contain unique or outstanding physiographic characteristics. (Example: a large rock outcropping overlooking surrounding countryside.)

Once one or more of these criteria has been established, four important questions must be answered:

1. Does the site have the potential for having a sound management plan?
 - a. Will it be costly to maintain?
 - b. Will the public be allowed access?
 - c. Does it have adequate access?
 - d. What will the land be used for?
2. Is the site large enough to be significant for its purpose?

There is not a minimum size required by SPACE, but it must be large enough to have a significant impact on the reason it was selected.
3. Can the land be acquired with reasonable effort in relation to its value and/or purpose?

SPACE has limited resources, and if several projects are being considered at the same time, we must set priorities with the resources we have.
4. Has the best protection tool been selected?

conservation easement, outright gift, purchase, management agreement, other

Landowners considering preserving land should consult their own attorney and/or financial advisor. SPACE is certainly available for questions and answers, but just as each piece of land is unique, so will each conservation project.

WHAT ARE MY OPTIONS?

Land donation

Donating your land may be the best conservation strategy if you do not wish to pass the land on to heirs; or perhaps you own property you no longer use or can manage.

The Spartanburg Area Conservancy accepts outright donations of land, where the owner transfers title. The owner can claim an income tax deduction for the full amount of the fair market value (an appraisal is needed). No property taxes would be paid because the property would be owned by SPACE.

You can also donate your land by will. If you want to own and control your land during your lifetime, but assure its protection after your death, you can donate it by will.

Conservation Easement

A conservation easement (or conservation restriction) is a legal agreement between a landowner and a land conservancy that permanently limits uses of the land in order to protect its conservation values. It allows you to continue to own and use your land and to sell it or pass it on to heirs.

- the landowner (Grantor) promises to keep the land in its natural condition without extensive disturbance, and

- the conservation organization (Grantee) is granted the right to enforce the covenant of the easement and to monitor the property.

The conservation easement is similar to a deed of restrictive covenants in subdivision. That is, it contains a series of restrictions related to various uses of land.

Conservation easements are intended to preserve property in its natural, undeveloped condition, providing a benefit to the public by conserving open lands, forests, historic land, and significant natural resources. Because of this public benefit, there sometimes can be significant tax incentives for the landowner that grants a conservation easement.

When is an easement the right method for conservation?

While it is difficult to generalize, conservation easements seem to work best when:

- the landowner wishes to conserve and protect the land;
- the land does not require extensive management;
- current and future uses of the land by the owner are compatible with preservation of its natural features; and
- sometimes the owner can utilize the tax advantages of an income tax deduction and/or reduction in the value of his or her potential estate.

With a conservation easement, does the public have the right to come on my property?

No. Title to the land, along with the right of exclusive use and enjoyment of the land, remains with the landowner. If, however, the landowner wishes to invite the public to access the property, provisions can be made for this.

More Questions and Answers

Who actually owns the land protected by a conservation easement?

The landowner retains ownership of the land. The landowner can continue to live on the land, use the land for farming, hunting, etc.

What are the costs of a conservation easement?

SPACE recommends that a landowner review a draft of the conservation easement with appropriate professional advisors.

- An appraiser can determine the market value of the conservation easement, which is required if the landowner intends to claim income tax benefits.
- An attorney should review the draft conservation easement to provide legal advice.
- An accountant can determine the income tax implications of the donation.
- An estate planner can review the implications of the easement for the landowner's estate.

In addition, the conservancy will require a legal description of the property and verification of title from a real-estate attorney, and a surveyor may be needed to clearly delineate the

property to be protected.

How much is a conservation easement worth?

The financial value of a conservation easement depends on the land it protects, the surrounding conditions and the extent of the restrictions placed on the use of the land. Generally, the more restrictive the easement, the higher the easement value is. To determine the easement value, the land must be appraised at its fair market value both with and without the easement restrictions. The difference in these appraisal values at the time the easement is put in place becomes the value of the easement. It is this value that may be used for tax purposes. Commissioning an appraisal is the responsibility of the landowner, and it is important to use an appraiser experienced with the specialized nature of conservation easement appraisals.

What are the financial incentives for donating a CE?

First of all, it is important for the landowner to understand that in order to receive tax benefits, 4 items must be addressed:

- 1) the conservation project must meet the requirements of the Internal Revenue Code 170.
- 2) An appraisal is the responsibility of the landowner for gifts of property valued at more than \$5,000. The donor must use a qualified appraiser who follows Uniform Standard of Professional Appraisal Practice. The conservancy will request a copy of the completed appraisal.
- 3) The conservancy cannot guarantee as to whether a particular land or easement donation will be deductible.
- 4) The landowner must provide IRS Form 8283 for the conservancy to sign.

There are several significant tax incentives for donating a conservation easement in South Carolina. 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 SC Department of Revenue.

In general, the IRS allows the donor of a qualified conservation easement to take an income tax deduction for as much as the full value of that donation, limited to 30% of the donors adjusted gross income, over the course of six years.

Since June of 2001, the S.C. Department of Revenue has allowed easement donors to claim an income tax credit for up to 25% of the value of their donation, capped at \$250 per acre. No more than \$52,500 of the total credit may be used in a single year, but the remainder may be carried forward indefinitely or even sold, gifted or bequeathed.

A conservation easement may also significantly reduce the estate taxes that must be paid by the heirs of the property. This is especially valuable for families that have land as a significant portion of their net worth. Furthermore, legislation passed in 1997 may allow the remaining value of land protected by conservation easement to be reduced by 40% for the

calculation of estate taxes.

What is SPACE's responsibility after receiving the conservation easement?

SPACE assumes the basic legal responsibility of ensuring that the landowner upholds the restrictions in the document. Therefore, staff must inspect the property on an (usually) annual basis.

Does the conservation easement have to apply to an entire tract of land?

No, the easement can be written to include a portion of the land, for instance, if the Smiths wanted to allow for their daughter to build a house on the property sometime in the future.

What types of uses are allowed by a conservation easement?

Traditional and historic uses, such as farming, forestry, wildlife management and hunting, are often allowed in a typical easement. In all easements, the landowner retains the right of privacy, to transfer ownership, to maintain and replace houses and other structures and to take whatever actions may be necessary to maintain the existing conditions. It is appropriate for some landowners to retain the right to set aside a limited number of house sites.

What types of uses are not allowed by a conservation easement?

In order to protect the conservation values of the land, a conservation easement will prohibit industrial and commercial activities, restrict the number and size of future structures, limit the activities that would be permitted in and around valuable natural features such as wetlands and protect the nature character of the property. In essence, the landowner gives up those rights and uses that would damage or destroy those features that make the land natural and significant.

Who is responsible for maintenance and liability on a property protected by conservation easements?

Since the landowners continue to own the land, the landowner remains responsible for all maintenance and liability issues.

Do other organizations accept conservation easements?

There are a number of private, non-profit organizations that accept conservation easements in the upstate. They include organizations that are active statewide, as well as those that have a smaller, more local focus. SPACE is local and focused on the Spartanburg County area.

Can a conservation easement be donated by will?

Yes, a landowner may specify by will that a conservation easement be placed on his/her property upon his/her death. In addition to consulting a tax advisor or estate planner, the landowner should contact SPACE as part of his/her estate planning to negotiate the broad terms of such an easement. If the easement qualifies under federal tax law, it can be expected to reduce the value of the land included in the estate and therefore, any estate taxes due.

Is land protected by a conservation easement protected from condemnation?

A conservation easement will not automatically prevent public condemnation. The state's power of eminent domain will supercede any number of private covenants, easements or other legal devices. However, SPACE will partner with the landowner to fiercely oppose any government action that would damage the conservation values of the property.

How long will the easement design process take?

The time it takes to design and execute a conservation easement depends upon many factors, including the size and complexity of the property and its ownership, but usually takes about 5-7 months. SPACE's Land Protection Committee needs to consider and inspect the property and eventually get a vote from the Board of Trustees on whether or not to accept the easement. Landowners need time to think about the specific restrictions in the easement, and to consult with their tax advisors, attorneys, and /or estate planners. An interested landowner should begin talking to SPACE in the spring to ensure completion of an easement that fiscal year. Landowners should not expect to complete an easement by Dec. 31st if they contact SPACE after the first of September.

What does SPACE gain from accepting a conservation easement?

SPACE is a private, non-profit conservation organization with a mission to preserve the natural resources and greenspace for all residents and future generations to enjoy. Each acre of land we help protect is a step in the direction of completing our mission.

Does SPACE charge a fee?

SPACE funds its general operations through contributions of its loyal memberships (individual and corporate), and through fundraisers throughout the year.

SPACE now requires that easement donors provide a cash donation together with the easement. This Stewardship Fee helps to assure that SPACE will have the resources in the future, to enforce the restrictions of the easement, as required by the IRS for any tax deduction. This fee will be calculated by SPACE depending on several factors: number of acres, significance of biodiversity on the land, distance from the SPACE office, appraised value of the land, etc.

The Stewardship Fee paid by the landowner is tax-deductible and may be made in either a single lump sum or spread out over a period of several years. Remember that you, the landowners, are receiving tax benefits from the easement. SPACE is grateful for your steps in protecting your land for conservation purposes.