



# THE CONSERVATION EASEMENT

## *A Flexible Tool for Preserving Family Lands*

NATURAL LANDS TRUST, INC.

*Preserving family lands from future development can be a satisfying act of generosity for people who are committed to protecting the natural beauty of our environment. For over thirty years, Natural Lands Trust has been helping landowners preserve their family lands through donations, deed restrictions, bargain sales, limited development, conservation subdivisions, and conservation easements. In our experience, the conservation easement is the tool most often used because it allows landowners to achieve their conservation goals while maintaining ownership and a high degree of control over their property. While this brochure focuses only on conservation easements, Trust staff are available to discuss with you how any of these tools might also help you attain your conservation goals.*

### WHAT IS A CONSERVATION EASEMENT?

The conservation easement is a flexible tool that protects land while leaving it in private ownership. The easement, a legal document, guides future uses of a property regardless of ownership. A landowner generally donates the easement to a qualified conservation organization or government agency which in turn ensures that the conditions of the easement are met over time.

*Easements provide numerous benefits:*

~ The landowner retains title to the property and can live on it, sell

it, or pass it on to heirs, knowing that it will always be protected.

~ Often families are forced to sell land to raise cash to pay estate taxes. Easements may eliminate or greatly reduce estate taxes, preventing the forced sale of properties. Easements may also provide income tax and property tax reductions by eliminating unwanted development value.

~ Easements can reduce the potential for disagreement over future uses when lands are passed on to the next generation.

~ Easements offer permanent protection, applying to all future landowners. A land trust or government agency ensures that restrictions are followed in perpetuity.

Landowners "own" many rights associated with the land, e.g., the right to harvest timber, build structures, extract minerals or farm, subject to zoning and other laws. By placing an easement on land, some of these rights are relinquished. For example, a landowner might give up the right to build additional residences while retaining the right to grow crops.

Easements can be tailored to protect the land's natural and cultural values, meet financial and personal needs, and attain conservation goals.

The landowner, through the easement, decides what the future use of the land will be. It might be that the landowner retains the right to create future building lots, but limits the number to less than would be allowed under local zoning. In many cases, the landowner limits the location of future structures and the types of land use activities that can take place. Some easements allow for traditional public uses (e.g., hiking or horseback riding), but this is not required.

The flexibility of conservation easements may prove beneficial in financial planning. An easement can

either be applied to part of a property or placed on the entire tract, while allowing for a building site within which construction can occur.

### TAX BENEFITS OF DONATING AN EASEMENT

The donation of a conservation easement to a land trust may result in tax benefits related to income, estate, and property taxes. (Please note that Natural Lands Trust cannot offer tax advice. The following examples are for general information only. You should obtain expert tax advice from a qualified attorney or accountant.)

#### Federal Income Tax

The value of an easement donation is based on a qualified appraisal of the land "before" and "after" the easement is in place.

Assume, for example, that owners of an unrestricted property worth \$500,000 place an easement on their land that precludes all future development. A qualified appraiser then determines that the land's fair market value, without the potential for development, is \$200,000. In this case, the charitable gift would be valued at \$300,000. The value of this tax deduction is computed as follows:

$$\text{Deduction} \times \text{Tax Rate} = \text{Tax Savings}$$

If the donor is in the 39% tax bracket, the calculation would be:

$$\$300,000 \times .39 = \$117,000$$

If the donor does not have enough income to use the full amount of the deduction (\$117,000 in this example), it can be spread over 6 years.

While most conservation easements reduce property values, there

is no rule of thumb for determining what the diminution in value will be. In general, the reduction tends to be greatest where a highly restrictive easement is placed on prime development land in an area experiencing intense growth.

#### Federal Estate Tax

High estate taxes can prevent a family from passing land on from one generation to the next. When landowners die and leave land to their children, the heirs often find that the property has appreciated dramatically, making them land-rich but cash poor.

In the following example, a couple bought 100 acres of rural land for \$3,000 in the 1950s. The land is now surrounded by suburban subdivisions. When they die, the couple leaves the land to their children, intending to have the property remain in the family forever. However, the property, now worth \$3,000,000, is the major asset in their \$3,500,000 estate. Since the federal estate tax obligation is well over \$1,000,000, their children have to sell at least some of the land to secure enough cash to pay the federal estate taxes. (In most cases, state inheritance or estate taxes create the need for even more cash.)

For estate tax purposes, land is valued at the current fair market value (i.e., its potential for development), not at its original purchase price. In the example above, taxes have to be paid on development potential that the couple never intended to use and the inheritance available to their heirs is reduced unnecessarily.

A landowner who restricts future development with an easement can reduce the fair market value (and, consequently, the estate taxes). This

effect tends to be greatest for landowners with sizeable estates and substantial real estate holdings because federal law currently exempts the first \$600,000 of assets. Due to the increasing market value of land, more and more landowners find their holdings exceed this limit.

#### Property Tax

Placing land under easement might or might not result in property tax savings. The tax assessment on an easement-restricted property should reflect the land's reduced value. However, local assessment practices vary. Property tax relief for eased land should be considered on a case-by-case basis.

### THE EASEMENT PROCESS AT NATURAL LANDS TRUST

At Natural Lands Trust, the process begins with an understanding of you and your needs. Generally, a representative of the Trust will meet with you, review your objectives, explain NLT's easement program, and walk the property with you to determine its conservation potential.

Since most landowners need time to consider easement options, it is not unusual for them to meet with Trust staff again before making a commitment to proceed. Once this decision is made, our staff will review the proposed easement with the our Board of Trustees. Board approval is required before the Trust can accept an easement.

Next, we compile baseline data on your property, documenting its physical condition and natural resource value. Maps, photographs, and narrative descriptions of the existing conditions provide the basis for developing a Conservation

## A Personal Testament

*"The desire to protect one's land comes on gradually," says one NLT easement donor, "and then suddenly you do it. I feel a little selfish, in a sense. We're only doing what we want to do. There ought to be something left for people in the future. Meadows, ponds, rolling hills, wetlands, ours seemed an ideal place."*

Ideal it is! This 60 acre farm in Chester County, Pennsylvania has changed little since the 1700s. Although development has not yet engulfed the neighborhood, the subdivision of several large parcels surrounding the farm seems inevitable. These landowners, knowing they have protected a part of the historic landscape surrounding Valley Forge, hope others will follow their example. *"It would be the greatest thing since sliced bread if all our abutting neighbors would do likewise."*

Has this couple had any regrets since granting the easement to NLT in 1993. *"Not at all,"* says the landowner. *"We've been pleased to see how seriously the Trust takes its monitoring responsibilities."*

Plan for the property and for future monitoring of easement conditions. The baseline data also satisfies IRS regulations for documenting the condition of the property at the time of the charitable contribution.

After we complete the baseline property documentation, we will prepare a Conservation Plan that meets your needs and the criteria of our easement program. As we prepare the plan, we may suggest special measures to control future disturbances or encroachments upon floodplains, wetlands, or other sensitive environmental areas.

The actual conservation easement document will reflect the objectives that you and we have agreed upon, as well as the Conservation Plan for your property. If you want the gift of the easement to qualify as a tax deductible contribution, it must

meet three requirements of Section 170 of the Internal Revenue Code:

1. *It must be a qualified real property interest;*
2. *It must be given in perpetuity to a qualified organization; and*
3. *It must be donated exclusively for conservation purposes.*

To meet these requirements, the Trust will assemble the appropriate documentation and prepare statements aimed at qualifying the easement on the basis of one of the conservation purposes acceptable to the IRS. Not every property will meet this conservation purposes test and the final decision as to whether or not a property qualifies lies with the IRS.

In instances where the amount of the value claimed as a deduction is more than \$5,000, the IRS requires

that the donor obtain a qualified appraisal to justify the value of the gift at the time the easement is conveyed. This appraisal must comply with federal substantiation requirements. We can assist with this task by providing background information to the appraiser; however, the values claimed for the easement gift are strictly a matter between the donor of the easement, the appraiser, and the IRS.

When you are prepared to execute the easement, it is signed by you as the donor and the Trust as the donee. It is then notarized and recorded. If there is an existing mortgage on the property at the time of the easement conveyance, you must also obtain the consent and joinder of the mortgagee in the conservation easement.

## WORKING ARRANGEMENTS AND COSTS

Natural Lands Trust is a nonprofit conservation organization chartered as a public charity under section 501(c)(3) of the Internal Revenue Code. To continue our work, we ask the landowner to reimburse us for our costs.

### Easement Conveyance Costs

NLT's conveyance costs include the materials and staff time necessary to prepare the easement documentation and our attorney's time to review the easement. In addition, easement donors will have their own legal and, in some cases, surveying costs. Surveying needs vary widely and depend upon the nature of the Conservation Plan in which the owner is interested. In many cases, no surveying is required.

### Stewardship Fund Contribution

When a land trust receives an easement, it assumes permanent responsibility for monitoring the property and enforcing its legal terms. This generally involves an annual inspection of the property and ongoing contact with the landowners.

If an easement is violated, then we must take action to have the violation corrected, including legal measures if needed. At the time of the easement gift, we request a donation to help defray future stewardship expenses.

Because we assume responsibility for perpetual monitoring and enforcement of easements, we request a cash donation to create an endowment, or stewardship fund, for each property. Income from the fund is used to cover the costs of inspecting the property once a year to make sure that the specific restrictions of the easement have not been violated. If a violation of the easement is discovered, NLT tries to work with the landowner to correct it before permanent damage is done to the property.

We usually find that the charitable contribution to which the landowner is entitled more than compensates for these easement costs. However, when this is not true, and especially when the land on which the easement is to be placed offers exceptional environmental values, we are willing to consider accepting an easement with lower levels of landowner contribution.

### DONATING EASEMENTS BY WILL

A conservation easement can also be granted in your will. With this option, you won't receive income or property tax benefits, but your estate taxes can be reduced.

If you intend to donate an easement by will, you need—during your lifetime—to negotiate the terms of the easement with us. Since there are costs associated with monitoring easements, we must reach an agreement regarding monetary donation to accompany the easement. The collaborative planning ensures that the easement meets your conservation goals, as well as our long-term objectives.

Because an easement gift can take time to plan, you may want to add a codicil to your will now, stating your specific intentions for the land and instructing your executor to complete the easement in the event of your death. Your will can be amended later if family or financial circumstances change or if you decide to grant the easement during your lifetime. In the interim, though, you will have protected the land and lowered estate taxes.

### YOUR ATTORNEY'S ROLE

Tax laws are complex and subject to change. If you are considering a conservation easement for your land, we encourage you to retain an attorney competent to advise you on real estate and tax matters. We will work closely with your attorney to prepare the easement.



Natural Lands Trust is dedicated to working with people to conserve land in the Philadelphia metropolitan region and other nearby areas of environmental concern.

#### TRUST PRESERVES AND CONSERVATION EASEMENTS

We acquire preserve properties through gift, bargain sale, or purchase at fair market value and accept conservation easements from property owners. We currently maintain a network of regional and community preserves totaling close to 13,000 acres and hold easements on properties encompassing approximately 8,000 acres.

#### PRIVATE CONSERVATION INITIATIVES

We prepare conservation plans for family landowners, other non-profit organizations and, when appropriate, developers for the purposes of providing practical conservation alternatives to conventional land development.

#### PUBLIC CONSERVATION INITIATIVES

We work with rural and suburban municipalities in designing and implementing community-wide networks of conservation lands.

We also provide technical assistance to county, state, and federal government agencies on a variety of conservation projects, such as areawide conservation plans and greenways.

#### CONSERVATION EDUCATION

We enhance the public's understanding of regional conservation needs and opportunities through publications, workshops and demonstration projects.

Natural Lands Trust was created in 1961 by Philadelphia Conservationists, Inc., now a supporting organization of the Trust, whose members remain committed to the acquisition of significant natural areas.

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