



Questions, interested in conserving your land, or know a landowner interested? Call Dave Cable, Executive Director, at 704-577-2004 or email him at [dave@davidsonlands.org](mailto:dave@davidsonlands.org).

## CONSERVING YOUR LAND

America loses 4,000 acres of natural land per day to development. As our region grows conserving land is profoundly important today and to the quality of life of future generations. Those who conserve their property do so to fulfill a dream of preserving their land's natural features from development, forever. Fortunately, there are well established procedures to conserve property.

Three ingredients are required for a successful conservation project:

- A property owner who thinks long-term about, and values, natural landscapes and resources or working farms, and who desires to create a legacy for future generations of open space and protected natural resources and farmland;
- Land of sufficient size and with conservation values (such as open lands, forests, wildlife habitat, scenic vistas, farmland, streams and other natural features), the protection of which will benefit the public (do not imply public access); and
- A capable and qualified conservation non-profit organization (Davidson Lands Conservancy) to execute the conservation transaction and forever steward and protect the land.

Land may be preserved by either granting a conservation easement or by conveying the entire property (fee simple interest) to Davidson Lands Conservancy.



Grey Road Conservation Easement

Conservation easements are commonly used legal instruments to permanently conserve land - over 50 million US acres are protected by land trusts. Each easement is unique to the protected property - conservation easements are tailored to the needs of the landowner and to the conservation values of the property. Landowners retain ownership in the land and, by the easement, promise to keep the land in its natural condition. The easement is held by a land trust, in this case Davidson Lands Conservancy (DLC), which promises to monitor and protect the conservation terms of the easement in perpetuity. Conservation easements are permanent and recorded in the land records.

## BENEFITS OF CONSERVING YOUR LAND

***The key benefit motivating most people to conserve their land is the unique reward of knowing their life's legacy includes permanent protection of their land in its natural state. Few acts in society today, if any, offer similar permanent and positive impacts.***

Landowners conserving property may benefit from the following.

- Eligible for reduced income and estate taxes. A conservation easement will likely lower the value of your property and the donation of the easement may be a charitable gift. The value of the conservation easement determines the charitable contribution and your income tax deduction. One can claim a deduction of 50% of adjusted gross income in any year (100% for farmers) and

### Tax Deduction Example

A landowner with an AGI of \$50,000 a year who donated a \$400,000 qualifying conservation easement may be eligible for a federal income tax deduction of \$25,000 in the year of the gift and \$25,000 per year for 15 years. The total deduction would be \$400,000.

take those deductions the year of the gift and carry them forward 15 years or until they are exhausted. See box for example.

- Eligible for reduced property taxes. Property taxes are not likely to be impacted if the conserved property is enrolled in NC's Present Use Value program. Permanently conserved properties may continue to participate in the Present Use program.
- Continued use of the conserved property, including living on the property and enjoying the land. The terms of the conservation easement determine the allowable property uses, and the easement is tailored to conserve the natural values while meeting the landowner's needs.
- The conserved property can be sold or inherited.

## STEPS TO CONSERVING YOUR PROPERTY

DLC is your partner in conserving your land. Here are the steps to conserving your land by donating a conservation easement.

1. **Introduction to the Conservancy.** Fully understanding your family's vision for your property, including your intended uses and conservation desires, is critical to the conservation process. Early conversations also provide a chance for us to explain the benefits of conservation, background on the Conservancy, potential issues with the project, and next steps.
2. **Property Visit.** We will arrange a site visit with you and other family members to assess your property's conservation values and natural features. Key conservation values include water quality and stream protection, farmland, wildlife habitat, open space, and hardwood forests.
3. **Letter of Intent.** Once you are comfortable with the concept of working with the Conservancy, we typically draft for your consideration a non-binding letter of intent expressing our mutual interest in the project.
4. **Property History & Environmental Conditions.** The Conservancy will be part of the title chain of your property following placement of a conservation easement. Because of potential liability associated with any ownership of contaminated properties, the Conservancy is interested in the use and environmental history of the property. In most cases where the history of the property is clear and benign, completion of a formal phase I environmental assessment is not required. We ask that land owners complete and submit to us an environmental questionnaire (Fannie Mae Form 4340 available from the Conservancy).
5. **Draft Conservation Easement.** Because the recording of a conservation easement is permanent and runs with a property forever, it is critical that you and your family fully understand and endorse the terms and conditions of the conservation easement. Easements are customized to meet your needs and to fulfill your vision for your land while also protecting your property's key conservation values. Although Davidson Lands Conservancy works diligently to craft each donated easement to meet the IRS and NC Department of Revenue requirements, the Conservancy cannot guarantee the acceptability of any donation. You need to consult with your legal counsel or tax advisor regarding eligibility for tax benefits.
6. **DLC Committee and Board Approval.** After the conservation easement has been finalized through close consultation with you, the project is presented to the Conservancy's Land Conservation Committee. This committee reviews each of the Conservancy's land protection projects. Each project also requires review and approval by DLC's Board of Directors.



Arndt Conservation Easement

7. **Baseline Inventory of the Property.** A baseline documentation report documents the condition of the property at the time of the donation. The inventory, recognized in the tax code and standard industry practice, describes the natural features of the property and includes detailed maps and photos documenting the conservation values. Conservancy staff or staff from Catawba Lands Conservancy in most cases prepares the baseline inventory, but you may elect to engage a qualified consultant to prepare the inventory.
8. **Legal Description & Property Survey.** Similar to any real estate transaction, the Conservancy requires an accurate legal description and survey of the property. If the property has not been recently surveyed, we can arrange for the completion of a survey. The cost is typically borne by the landowner but we may be able to help with this. The Conservancy conducts its own title review of the property and may obtain a title insurance policy.
9. **Execute the Conservation Easement.** All owners of the property must sign the easement before legal recording. The easement is then recorded in the county register of deeds. The Conservancy safeguards the original easement in a secure, off-site storage unit and provides a copy to you for your records.



Runnymede Conservation Easement

10. **Stewardship and Legal Defense Donation.** The Conservancy requests each donating landowner consider a contribution to the Conservancy's Stewardship and Legal Defense Funds. These funds help the Conservancy pay for costs associated with permanently conserving and monitoring properties, including annual site visits, as well as any future costs in legally defending easements should they be challenged. The amount of the contribution reflects the complexities of the Conservancy's annual stewardship obligations and risks.
11. **Appraisal and Claiming Tax Benefits for the Donation.** To qualify for tax benefits, a qualified appraisal of the easement gift must be completed within 60 days of the date that the easement is signed and recorded; DLC requests that this 60-day window be before the date of closing so that we may review the appraisal. Conservation easement appraisals can be difficult and require unique knowledge and experience. We can help with the appraisal process but the ultimate responsibility of the appraisal resides with the landowner. It is important that the Conservancy staff talk with the appraiser before starting the assignment and receive the appraisal report for review 7 business days prior to closing the conservation easement transaction. Following the appraisal and after the donation, the donor or the donor's tax advisor presents IRS Form 8283 to the Conservancy for signature acknowledging the conservation easement gift. There are specific parameters and procedures regarding the appraisal process, so please consult with Conservancy staff on the details. *Davidson Lands Conservancy will not knowingly participate in a project where it has significant concern about the tax deductibility of the transaction or its own tax exempt status, and reserves the right to refuse signing IRS Form 8283 in such cases. Please consult with your legal counsel or tax advisor regarding eligibility of tax benefits.*
12. **Celebrate the Partnership.** Granting an easement to conserve your property is not the end; it's really just the beginning. After completing these steps and celebrating the permanent protection of your property, you, your family and the Conservancy continue our working partnership to ensure your property's conservation values are permanently preserved.



# FREQUENTLY ASKED QUESTIONS

## WHAT IS A CONSERVATION EASEMENT?

- A voluntary agreement that allows you to limit the type or amount of development on your property while retaining ownership of the land.
- The easement extinguishes most or all development rights and authorizes Davidson Lands Conservancy to monitor the property and enforce the terms.
- The easement ensures the property will be preserved from disallowed development, regardless of who owns the land in the future.
- The easement is tailored to protect the conservation values of the property while meeting your needs and vision.

## WHAT KINDS OF LAND CAN BE PROTECTED BY A CONSERVATION EASEMENT?

- Land eligible for a conservation easement must demonstrate significant conservation values. Woodlands, wetlands, farmland, endangered species habitat, scenic areas, wild and scenic rivers, historic areas and open space are common examples.



West Branch Nature Preserve

## HOW LONG DOES A CONSERVATION EASEMENT LAST?

- Conservation easements are permanent and perpetual.
- The terms of the easement apply to all present and future owners.

## WHAT ARE THE FINANCIAL ADVANTAGES OF DONATING A CONSERVATION EASEMENT?

Potential benefits may include:

- Lower property taxes;
- Reduced estate and inheritance taxes;
- Federal income tax deduction up to 50% of your Adjusted Growth Income (AGI) and may be carried forward for fifteen years.

## HOW MUCH IS THE CONSERVATION EASEMENT WORTH?

- A qualified appraiser can determine the conservation property's value. The land is appraised at both its fair market value *without* easement restrictions and its fair market value *with* the easement restrictions. The difference is the value of the easement.
- This easement value determines income and estate tax benefits.

## IF I DONATE A CONSERVATION EASEMENT, DO I STILL OWN THE LAND? CAN I STILL LIVE THERE?

- Yes, you still own the land and can live on and use the property assuming the easement recognizes your residential use of the land.
- The easement generally allows for additions and modifications to existing structures, construction of accessory and farm structures, and normal agricultural practices. Some easements permit timbering in accordance with accepted forestry practices and an approved plan.
- Reservation of a limited number of potential future home sites also may be possible.

## CAN LAND WITH A CONSERVATION EASEMENT BE SOLD? CAN IT BE INHERITED?

- Yes, the land can be bought, sold and inherited the same as all other land. But, the easement is in place and relevant independent of who owns the property.

## HOW DO FUTURE OWNERS KNOW THAT A CONSERVATION EASEMENT EXISTS?

- The easement is executed in the form of a deed and is on record at the county register of deeds. A title search of the property will reveal the easement.

## **WHAT ACTIVITIES DOES A CONSERVATION EASEMENT ENCOURAGE? WHAT ACTIVITIES DOES IT PROHIBIT?**

- Conservation easements generally encourage natural, recreational agricultural and forestry uses of the land.
- Public access to the conserved property is not inherent in conserving land.
- Commercial, industrial and residential development; the dumping of waste materials; the erection of billboards; and excavation, dredging and mining activities, except as may be necessary for agricultural and forestry uses of the property, are generally prohibited. Each easement is tailored to conserve the property's conservation values.

## **WILL THE CONSERVATION EASEMENT GRANT PUBLIC ACCESS TO MY PROPERTY?**

- No, the easement itself will not grant the public access to your land.
- If a donor wishes to allow the public access, such access is not prohibited by the easement.

## **WHO LOOKS AFTER AND ENFORCES THE TERMS OF THE CONSERVATION EASEMENT?**

- Davidson Lands Conservancy is responsible for enforcing the terms of the easement.
- Documented routine monitoring visits by the Conservancy check for compliance with the terms of the easement.
- In many cases, DLC names its conservation partner agency, Catawba Lands Conservancy, as a back-up easement holder should DLC be unable in the future to fulfill its obligations under the easement.

## **WHAT ARE THE OVERALL BENEFITS OF CONSERVATION EASEMENTS?**

- Provide a unique opportunity for land owners to leave the ultimate legacy of natural lands or farmland preserved for all time.
- Allow landowners to retain title to their property and continue to live on it, sell or pass it on to heirs, knowing that it always will be protected;
- Potentially provide landowners with tax benefits; and

## **IMPORTANT CONSIDERATIONS**

- Donors of conservation easements should retain their own legal counsel to assist in the transaction; the Conservancy cannot and does not provide legal or tax advice to donors even though it may provide general information and assistance.
- Davidson Lands Conservancy does not make assurances as to whether a particular land or easement donation will be deductible, what monetary value of the gift the Internal Revenue Service and/or state will accept, what the resulting tax benefits of the deduction will be or whether the donor's appraisal is accurate.
- In order to qualify for federal and state income tax deductions, a potential land or conservation agreement donation must meet all the requirements of Internal Revenue Code §170(h) and the corresponding U.S. Treasury Department regulations (Treas. Reg. §1.170A-14). Davidson Lands Conservancy can provide potential donors with copies of these regulations if requested.
- The IRS has specific requirements for reporting on and determining the value of charitable gifts. Gifts of property or interest in property valued at more than \$5,000 require a "qualified" appraisal, completed within 60 days of the date of the donation and before the donor's income tax return is submitted to the IRS, prepared by a "qualified" appraiser. The appraiser's valuation must conform to the Uniform Standards of Professional Appraisal Practice and IRS requirements. It is likely required that the appraisal be submitted to the IRS with the donor's tax return. The donor is solely responsible for any determination of value of the donation. The

Conservancy requires a copy of the appraisal at least seven business days before the donation date for documentation of land or conservation easement valuation for bookkeeping purposes.

- Davidson Lands Conservancy understands and complies with its responsibilities to sign the donor's Appraisal Summary Form 8283 (which must be prepared by the donor and filed with the donor's tax return), and to file Form 8282 regarding resale of donated property when applicable. The Conservancy will sign Form 8283 only if the information in Section B, Part 1, "Information on Donated Property," and Part 3, "Declaration of Appraiser," is complete. If the Conservancy has significant reservations about the value of the gift, it may seek additional substantiation of value, may disclose its reservations to the donor or may refuse to accept the donation.