



PARTNERSHIP  
*for*  
S M A R T E R  
G R O W T H

## SUMMARY OF THE BENEFITS OF A CONSERVATION EASEMENT

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### What is a conservation easement?

A conservation easement is a legal agreement between a landowner and a land trust or government agency that permanently limits future development of the land in order to protect its conservation values.

- The terms of the easement are negotiated between the landowner and the organization that will hold the easement (the vast majority of easements in Virginia are held by the state established Virginia Outdoors Foundation).
- The primary provision of a conservation easement is a limit on subdivision of the property.
- Landowners continue to own, use, and control their land, and can sell it or pass it on to heirs.
- Easements generally allow for the continuation of current uses such as agriculture, forestry, hunting, and fishing.
- An easement does not require landowners to provide public access to their land.
- Depending on the size and nature of the property and the conservation values being protected, it may be possible for the landowner may retain the right to build one or more additional structures, or do one or more subdivisions.
- Easements protect the land “forever” – the terms of the easement apply to all future landowners.
- The organization holding the easement is responsible for making sure the easement's terms are followed.

### What are the benefits of donating an easement?

The primary reason landowners donate conservation easements is to preserve the natural, scenic, and historical integrity of their land *forever*. Many want to establish a legacy for their children and grandchildren. Most value the peace of mind knowing that their land will be always protected from development.

In addition, there are significant income tax and estate planning benefits. In order to be tax deductible, the easement: a) must be given in perpetuity; b) must be given to a qualified governmental or non-profit organization; c) must have a qualified appraisal; and d) must be donated exclusively for “conservation purposes” (in other words the property must have some significant natural, scenic, historic, scientific, recreational, or open space value).

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*The Partnership for Smarter Growth is providing the following summary of the tax benefits of conservation easements for informational purposes only. Please consult your attorney and/or accountant for professional advice.*

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**1. Federal Income Tax Deduction.** The donation of an easement is treated as a charitable gift and the value of the easement (the value of the property pre-easement minus the value of the property post-easement) may be deducted from the donor's income for purposes of calculating income taxes.

- For 2008 and 2009, the income tax deduction is limited to 50% of gross adjusted income in the year the easement is given. Any unused deduction can be carried forward over 15 additional years.
- Farmers who receive more than 50% of their income from agricultural activities can deduct up to 100% of their income

**2. Virginia State Income Tax Credit.** When a landowner donates a conservation easement, he or she is eligible to receive a Virginia income tax credit of 40% of the value of the easement. The landowner may use the credit to offset taxes owed. If the credit is not fully used up in the year of the easement donation, it can be carried forward for an additional twelve years. Furthermore, unused portions of the credit may be sold or transferred to other Virginia taxpayers.

- For example, a landowner who pays \$10,000 in state income tax each year donates an easement in 2009 worth \$500,000, the landowner would receive a credit of \$200,000 (40% of \$500,000). The landowner could personally use \$110,000 in income tax credits (\$10,000 each year for 11 years) and sell the remaining \$90,000 at a discount and with a transfer fee.
- For more information, contact the Land Conservation Coordinator for a free copy of “VA Conservation Tax Credit Information Packet”.

**3. Estate tax reduction.** Estate taxes can be as high as 55% of the value of the donor's estate. In many cases, a landowner's heirs must sell the property just in order to pay estate taxes. By donating an easement, landowners can reduce these taxes in two ways:

- First, the estate will have been reduced by the value of the easement (smaller estate value means less—or perhaps no—estate tax due).
- Secondly, the American Farm and Ranch Protection Act of 1997 allows heirs to exclude up to an additional 40% of the remaining value of their land from estate taxes.

**4. Reduced real estate taxes.** In counties where “use value” taxation is in place, land subject to an easement is automatically entitled to taxation at use value rates. In localities that do not have use value taxation, land under easement is required to be assessed without regard to the development value that has been extinguished by the easement.

The tax benefits are designed to encourage protection of conservation values, not the creation of large-lot subdivisions. It is absolutely critical that both the easement and the appraisal satisfy federal and state codes in order to be eligible for tax benefits.

Source: Piedmont Environmental Council, [www.pecva.org](http://www.pecva.org), March 2009