

Answers to Common Questions About Forest Legacy Conservation Easements

What is a Forest Legacy Conservation Easement?

A conservation easement is a legal agreement a property owner makes to restrict the type and amount of development that may take place on his or her property. Each easement's restrictions are tailored to the particular property and to the interests of the individual owner. Forest Legacy conservation easements are only made on forestland located within a qualified Forest Legacy Area as defined by the State Assessment of Need.

To understand the easement concept, think of owning land as holding a bundle of rights. A landowner may sell or give away the whole bundle, or just one or two of those rights. These may include, for example, the right to construct buildings, to subdivide the land, or otherwise convert the land from forest uses. To give away certain rights while retaining others, a property owner grants an easement to the state.

The specific rights a property owner forgoes when granting a conservation easement are spelled out in each easement document. The owner and the prospective state government identify the rights and restrictions on use that is necessary to protect the property - what can and cannot be done to it. Each Forest Legacy landowner must have an approved Forest Stewardship or multiple resource forest management plans. The owner then conveys the right to enforce those restrictions to the state.

Why grant a Forest Legacy Conservation Easement?

People grant Forest Legacy conservation easements to protect their forestland from conversion to non-forest uses, *while retaining private ownership*. By granting an easement in perpetuity, the owner may be assured that the resource values of her or his property will be protected indefinitely, no matter who the future owners are. Granting an easement can also yield tax savings, as discussed below.

What Kind of Property Can Be Protected by a Forest Legacy Conservation Easement?

Any property located in an approved Forest Legacy Area as identified in the state Assessment of Need can be submitted to the State Forest Stewardship Coordinating Committee by a willing landowner. These properties have significant forest values that can be protected by a Forest Legacy easement. This may include forestlands with significant wetlands, endangered species habitat, scenic areas, historic areas, and more. Land conservation and professional foresters can help you evaluate the relative features of your property.

Which states have completed an Assessment of Need?

The following states and territories have completed their Forest Legacy Assessment of Need: CA, CT, DE, HI, IL, IN, MA, MD, ME, MN, MT, NC, NH, NJ, NY, PR, RI, SC, TN, UT, VT, VA, WA, and WI. Each document identifies Forest Legacy Areas and the conservation objectives for the Forest Legacy program in that state. Funding for the Forest Legacy program comes to the participating states through the USDA Forest Service.

<http://www.fs.fed.us/spf/coop/flp.htm>

Some states have copies of their Assessment of Need online: North Carolina's Assessment of Need:

<http://www.ces.ncsu.edu/nreos/forest/legacy/index.html>

South Carolina's draft Assessment of Need:

<http://www.dnr.state.sc.us/wild/forlegacy/forlegacy.html>

Who Can Grant an Easement? To Whom Can They Grant It?

An owner of forest property with significant forest resources located within an approved Forest Legacy Area may apply for a Forest Legacy easement through their State Forester. If the property belongs to more than one person, all owners must consent to granting an easement. If the property is mortgaged, the owner must obtain an agreement from the lender to subordinate its interests to those of the easement holder so that the easement cannot be extinguished in the event of foreclosure.

If an easement donor wishes to claim tax benefits for the gift, he or she must donate it or sell it for less than fair market value to the state or to a conservation organization that qualifies as a public charity under Internal Revenue Code Section 501(c)(3). Most land trusts meet this criterion.

Holding an easement, however, is a great responsibility. A property owner should make sure that the recipient organization has the time and resources to carry out that responsibility. An organization that accepts the donation of an easement typically will ask the owner to make a contribution toward the costs of monitoring the easement in perpetuity or will establish a monitoring fund from other sources.

How Restrictive is an Easement?

An easement restricts development to the degree that is necessary to protect the significant forest values of that particular property. If the goal is to protect forestland from conversion to non-forest uses, the easement will restrict subdivision and development while allowing for activities necessary for and compatible with a forestry operation. Even the most restrictive easements typically permit landowners to continue their traditional uses of the land and Forest Legacy encourages traditional forest uses.

How Long Does an Easement Last?

A perpetual easement is written so that it lasts forever. Only gifts of perpetual easements, however, can qualify a donor for income and estate tax benefits. The Forest Legacy program only accepts perpetual easements.

An easement runs with the land - that is, the original owner and all subsequent owners are bound by the restrictions of the easement. The easement is recorded at the county, parish, or town records office so that all future owners and lenders will learn about the restrictions when they obtain title reports.

What are the Responsibilities of a Forest Legacy State Lead Agency?

The Governor of that State designates the state lead agency. That state agency is responsible for enforcing the restrictions that the easement document spells out. To do this, the state lead agency monitors the property on a regular basis, typically once a year. State representatives visit the restricted property, usually accompanied by the owner. They determine whether the property remains in the condition prescribed by the easement and documented at the time of the grant. The state lead agency maintains written records of the monitoring visits and reports to the US Forest Service. The visit also keeps the state and the property owner in touch.

If a monitoring visit reveals that the easement has been violated, the state lead agency has the legal right to require the owner to correct the violation and restore the property to its condition prior to the violation.

Must an Easement Allow Public Access?

Landowners who grant conservation easements make their own choice about whether to open their property to the public. Some landowners convey certain public access rights, such as allowing fishing or hiking in specified locations or permitting guided tours once a month. Others do not.

If an income tax deduction is to be claimed, however, some types of easements require access. If the easement is given for recreation or educational purposes, public access is required. For scenic easements, much of the property must be visible to the public, but physical access is not necessary. Access generally is not required for easements that protect wildlife or plant habitats.

How Can Donating an Easement Reduce a Property Owner's Income Tax?

The donation of a conservation easement is a tax-deductible charitable gift, provided that the easement is perpetual and is donated "exclusively for conservation purposes" to a

qualified conservation organization or public agency. Internal Revenue Code Section 170(h) generally defines "conservation purposes" to include the following:

- the preservation of land areas for outdoor recreation by, or the education of, the general public
- the protection of relatively natural habitat for fish, wildlife, or plants, or similar ecosystems
- the preservation of open space - including farm and forest land- for the scenic enjoyment or pursuant to an adopted governmental conservation policy; in either case, such open space preservation must yield a significant public benefit
- the preservation of historically important land areas or buildings.

To determine the value of the easement donation, the owner has the property appraised both at its fair market value without the easement restriction and at its fair market value with the easement restrictions. The difference between those two appraised values is the easement value. Detailed federal regulations govern those appraisals. <http://www.usdoj.gov/enrd/land-ack/>

An example: A property has an appraised fair market value of \$100,000. Ms. Price, the landowner, donates a conservation easement to a local land trust to meet the purposes of the Forest Legacy program. The easement restrictions reduce the property's market value to \$64,000. Thus, the value of her gift is \$36,000. Assuming the easement meets the conservation purposes test, Ms. Price - like any donor of appreciated property - is eligible to deduct an amount equal to 30% of her adjusted gross income each year for a total of 6 year, or until the value of the gift has been used up. If Ms. Price has an annual adjusted gross income of \$30,000, she can deduct \$9,000 a year (30% x \$30,000) until she has used up the \$36,000 value. In this case, she will use up the gift in 4 years (4 x \$9,000 = \$36,000), if her income does not change.

This is just a simple example. Easement donors may qualify for greater tax savings, especially when state income tax deductions are applicable. Potential easement donors should seek legal council.

How Can Granting an Easement Reduce a Property Owner's Estate Tax?

Many heirs to large estates and to large tracts of forestland face monumental estate taxes. Even if the heirs wish to keep their property in the existing condition, the federal estate tax is levied not on the value for the property for its existing use, but on its fair market value, usually the amount a developer or speculator would pay. The resulting estate tax can be so high that the heirs must sell the property to pay the taxes.

A conservation easement, however, often can reduce estate taxes. If the property owner has restricted the property by a perpetual conservation easement before his or her death, the property must be valued in the estate at its restricted value. To the extent that the restricted value is lower than the unrestricted value, the value of the estate will be less,

and the estate will thus be subject to a lower estate tax. (Note that if the property owner donates the easement during her or his lifetime, he or she may also realize income tax savings).

Even if a property owner does not want to restrict the property during her or his lifetime, the owner can still specify in his or her will that a charitable gift of a conservation easement be made to a qualifying organization upon the owner's death. Assuming the easement is properly structured, the value of the easement gift will be deducted from the estate, reducing the value on which estate taxes are levied. Again, a lower tax results.

Can Granting an Easement Reduce and Owner's Property Tax?

Property tax assessment usually is based on the property's market value, which reflects the property's development potential. If a conservation easement reduces the development potential of the property, it may reduce the level of assessment and the amount of the owner's property taxes.

The actual amount of reduction, if any, depends on many factors. State law and the personal attitudes of local officials and assessors may influence or determine the decision to award property tax relief to easement grantors.