



## Guide to Donating a Conservation Easement

Beaufort County Open Land Trust

The Beaufort County Open Land Trust is pleased at the opportunity to work with you to protect your property via a conservation easement.

### Steps to Donating a Conservation Easement

Date Completed	Steps	Description
	Initial contact	Landowner(s) meets with the Land Trust staff to discuss the property to determine conservation goals and objectives.
	Site visit	Walk your land with Land Trust staff to discuss your goals and the options available to you for conserving your land. Evaluate the property's natural and scenic values.
	Gather Information	Discuss your conservation options with family members and appropriate advisors.
	Discuss Easement Terms	Meet with Land Trust staff to discuss the rights and restrictions that you would like to be included in the deed of conservation easement.
	OLT Land Committee Approval	Project is evaluated by OLT's Land Committee to determine if it meets conservation purposes and whether staff should continue work on the project.
	Easement Draft	The Land Trust staff prepares a draft conservation easement for review by the landowner and the landowner's attorney.
	Due Diligence	
	Appraisal	<p>Obtain a written appraisal from a <b>qualified</b> appraiser in order to determine the value of the conservation easement donation. The charitable donation of a conservation easement may qualify for a tax deduction, if IRS regulations are satisfied.</p> <p><i>The Internal Revenue Code 170 outlines appraisal requirements that the donor must satisfy in order to qualify for a tax deduction:</i></p> <ul style="list-style-type: none"><li>• <i>that a written qualified appraisal be prepared by a qualified appraiser (one who follows Uniform Standards of Professional Appraisal Practice);</i></li><li>• <i>that the appraisal cannot be made earlier than 60 days before the conservation easement closing;</i></li><li>• <i>that the easement donor has the responsibility for obtaining above appraisal and for providing a copy to the land trust for review at least 5 days prior to the scheduled closing.</i></li></ul>

		Beaufort County Open Land Trust will not knowingly participate in conservation easement projects where it has significant concerns about the appraisal values or the tax deduction. If you hope to take a tax deduction for a conservation easement donation, you may wish to obtain financial advice from your tax advisor and/or accountant. It should be noted, if no tax deduction is desired, no appraisal is needed.
	Survey	If your property has not been surveyed recently or if you are considering a change to the current boundary survey, a qualified land surveyor should survey the property prior to the final appraisal. Provide a copy of the survey to the Land Trust.
	Title search and insurance	Have your attorney prepare a title search and a title insurance binder for the conservation easement.
	Additional landowner due diligence, as necessary	(1) If there is a mortgage or lien on the property, your mortgagor must sign a document subordinating the mortgage to the conservation easement; and all other liens, such as a life estate or leases must be subordinated to the easement; (2) if there are signs of potential soils contamination the Land Trust will need an environmental survey. If the terms of the easement allow timbering, your will need to retain a professional forester to prepare a Timber Management Plan to be shared with the Land Trust and included in the Baseline Documentation Report.
	Secure OLT Land Committee and Board approvals	Land Trust staff presents the project to the board's Land Committee for their approval. The Committee evaluates the project by examining the conservation values of the property, the public benefits provided by the easement, potential stewardship risks, and financial considerations. If the Committee approves the project, it is subsequently presented to the Land Trust Board of Directors for their approval.
	Baseline Documentation Report	The Land Trust prepares a baseline documentation report that documents -with text, photographs and maps - the conservation values of the property, its history, and its current conditions, including, natural features, vegetation, structures and improvements.
	Stewardship Fund	Consider the amount you would like to donate to the Stewardship Fund to support the future costs of permanently monitoring and enforcing of your conservation easement.
	Finalize and record documents	Sign the <i>Deed of Conservation Easement</i> and the <i>Conservation Easement Baseline Documentation</i> , which records the condition of the property at the time of donation.
	IRS form 8283	Obtain IRS Form 8283 from your accountant or from the Land Trust in order to apply for a tax deduction. The completed form should be signed by the appraiser and the Land Trust.

## **Taking a Tax Deduction**

The donation of a conservation easement often qualifies as a charitable contribution, allowing the donor to take a federal income tax deduction for the value of the contribution. The following summarizes some specific Internal Revenue Service rules governing these contributions.

### ***Tax Incentive to Help You Conserve Your Land***

If you own land with important natural or historic resources, donating a voluntary conservation agreement can be one of the smartest ways to conserve the land you love, while maintaining your private property rights and possibly realizing significant federal tax benefits. These incentives make it easier for average Americans, including working family farmers and ranchers, to donate the development rights on their land. The incentive:

- The maximum deduction you can take for donating a voluntary conservation agreement is **50%** of your adjusted gross income (AGI);
- Allows the deductions to be carried up to 15 years.

### ***Arranging for an appraisal***

To claim a deduction, a landowner must obtain a **qualified appraisal** of the conservation easement from a **qualified appraiser**.

### ***What is the purpose of an appraisal?***

A conservation easement appraisal may have several uses. For charitable contribution purposes, the appraised value of the easement is used to determine the amount of any income tax deduction available. In this case, the appraisal procedure and report must conform to specific IRS standards noted below. An appraisal may also be important for estate planning or in reviewing value for property tax purposes. Additionally, an appraisal may be used to substantiate the purchase price of a purchased easement.

### ***Is an appraisal required?***

An appraisal is not always necessary. However, a landowner is required to obtain a qualified appraisal if the landowner is donating a conservation easement valued over \$5,000 and intends to seek a federal charitable income tax deduction for the gift. A landowner may also need an appraisal to obtain a mortgage subordination, to support a request for a property tax adjustment or to receive payment in exchange for the easement.

### ***What is a “qualified appraisal”?***

The Internal Revenue Code 170 outlines appraisal requirements that the donor must satisfy in order to qualify for a tax deduction:

- that a written qualified appraisal be prepared by a qualified appraiser (one who follows Uniform Standards of Professional Appraisal Practice) (These standards can be found on the web site of the Appraisal Foundation, [www.appraisalfoundation.org](http://www.appraisalfoundation.org));
- that the appraisal cannot be made earlier than 60 days before the conservation easement closing;
- and that the easement donor has the responsibility for obtaining above appraisal and for providing a copy to the land trust for review at least 5 days prior to the scheduled closing.

### ***Who is a “qualified appraiser”?***

The IRS defines a *qualified appraiser* an individual who has:

- Earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary,
- Regularly performs appraisals for which the individual receives compensation, and
- Is licensed or certified by the State of South Carolina for the type of property being appraised.

### ***What should landowners consider in selecting an appraiser?***

Landowners should ask a number of questions when considering who should conduct this critical part of the conservation easement process, including:

- Is the appraiser aware of the new regulations and penalties for appraisers?
- Have they had to defend appraisals in front of the IRS?

### ***How does an appraiser estimate value of an easement?***

The appraiser determines the value of the easement, most frequently based on the value of the land before and after being encumbered by the conservation easement. The difference is the value of the conservation easement and the amount that may be taken as a tax deduction. This procedure is typically known as the “before and after approach.”

#### **As a simple example:**

Value of the land before the conservation easement:	\$500,000
Value of the land after the conservation easement:	\$350,000
Difference = value of the conservation easement:	\$150,000
Proportionate value of the conservation easement example:	30%

Generally, a more restrictive easement will result in a higher proportionate easement value. But each parcel of land and each set of conservation restrictions are unique. *Therefore, no set or average percentage of value can be attributed to the rights relinquished in an easement.*

### ***What does an appraiser consider in estimating the value?***

An appraiser will look at a variety of factors concerning both the specific property subject to the easement and the surrounding area. Relevant factors will include:

- Location and character of the property,
- Existing zoning regulations and other laws or contracts that affect the property, and
- Development potential and future land use trends
- Specific restrictions placed on the land
- Specific rights reserved by the landowner
- Existence of contiguous or other property owned by the landowner or the landowner's family and the potential of the easement to enhance the value of the other property.

### ***When should the appraisal be completed?***

For charitable deduction purposes, the appraisal must be completed no earlier than *60 days* before the date of the gift (the date on which the conservation easement is signed and accepted by the Beaufort County Open Land Trust) and no later than the date on which the tax

return for that year is due. In some circumstances, an older appraisal can be updated with more current data. For other non-tax purposes, timelines may vary. Conservation easement appraisals are complex and time consuming. *As such, landowners should contact an appraiser early in the process as it may take up to 4 to 6 months or more to complete an appraisal.*

***Is it necessary to be concerned about the integrity of the appraisal?***

YES. The IRS views this issue very seriously and may impose substantial penalties on both the landowner and the appraiser for gifts that are overvalued for tax purposes. Congress recently created new thresholds and penalties for donors and appraisers who artificially inflate the value of an easement for tax purposes. Landowners are well advised to choose an appraiser carefully and to work with the appraiser, a tax advisor and the Land Trust throughout the process of completing a conservation easement.

***Required IRS forms***

To document the value of their gift, conservation easement donors must attach **IRS Form 8283** to their tax returns. Section B is the portion of Form 8283 that applies to easements valued at more than \$5,000.

In addition to Form 8283, the IRS requires a supplemental statement summarizing:

- The conservation values of the donated easement.
- The appraiser's valuation assumptions and conclusions, including fair market value of the property before the easement was in place and the fair market value of the property after the easement was conveyed to the Land Trust (if the before-and-after approach was used).
- Whether the easement was required by any contract, permit, or government approval.
- A description of any interest in any nearby land held by the donor or a related person.

The appraiser should be able to assist the donor in preparing this supplemental statement and may wish to include this required information as part of an overall appraisal summary. The Beaufort County Open Land Trust can also provide assistance in identifying the conservation purposes of the easement. Additionally, for easements valued at more than \$500,000, a copy of the entire appraisal must be included with the tax return.

***Obtaining the Beaufort County Open Land Trust's signature***

The Beaufort County Open Land Trust requests that donors submit IRS Form 8283 to the Land Trust after the donor and the appraiser have completed the appropriate sections and attached the supplemental statement. The Land Trust will then complete its portion of the form and return it for attachment to the donor's tax return. The Beaufort County Open Land Trust also requests that donors provide the Land Trust with a copy of the appraisal for the Land Trust's files.

***Additional information***

In addition to the detailed instructions for Form 8283, the Internal Revenue Service has a number of publications that provide information related to claiming a charitable contribution for the donation of a conservation easement. See IRS Publication 526, *Charitable Contributions* and IRS Publication 561, *Determining the Value of Donated Property*. These publications are available on the internet at [www.irs.gov](http://www.irs.gov) and from the Internal Revenue Service.

As with other aspects of donating an easement, the Beaufort County Open Land Trust highly recommends that all easement donors obtain professional advice from a knowledgeable attorney, accountant or other financial advisor before completing their tax returns.

## **Conservation Easement Stewardship**

Conservation easements are forever. With each easement, the Beaufort County Open Land Trust accepts responsibility to protect that land and its conservation values in perpetuity. Stewardship in the Beaufort County Open Land Trust is that portion of our program designed to make sure that we meet our responsibility for each conservation easement over time.

### ***Components of an Easement Stewardship Program***

There are a number of specific components to the Beaufort County Open Land Trust's conservation easement stewardship program. These include:

- Creating the Baseline Documentation Report
- Easement administration
- Monitoring (once each year, at a minimum)
- Landowner relations
- Community relations
- Easement enforcement and defense

Each component of the program, discussed below, plays a critical role in making sure the Land Trust fulfills its obligations to our landowners and the lands they have placed in our care.

### ***Working in Partnership***

The Beaufort County Open Land Trust recognizes that it cannot be successful without working in cooperation with the many landowners dedicated to protecting their lands through conservation easements. The Land Trust considers each of these landowners a partner in conservation and is dedicated to working with them in a respectful and professional manner.

### ***Voluntary Compliance vs. Legal Enforcement***

The primary objective of our stewardship program is to preserve the conservation values of those lands protected by conservation easements. Ensuring compliance with the terms of each easement is critical to meeting this objective. The Beaufort County Open Land Trust is prepared to legally defend and enforce its easements when necessary. Legal enforcement, however, is a remedy of last resort - our stewardship goal is voluntary compliance.

To this goal we work in partnership with landowners—and the local communities in which our protected lands are located.

### ***Recordkeeping***

Our commitment to land preservation cannot be met unless we also manage our program to keep track of the status and condition of the lands protected by our conservation easements. Therefore, we also:

- Document the condition of lands protected by each easement at the time the easement is completed by completing a baseline documentation report
- Monitor the condition of the property annually
- Maintain accurate records regarding each conservation easement accepted by the Land Trust

### ***Stewardship Funding***

The donation of a conservation easement is an act of generosity by the landowner. In accepting this easement, the Beaufort County Open Land Trust assumes the legal obligation to carry out the donor's desires for the property by upholding the terms of the easement – forever. In assuming the stewardship responsibility, the Land Trust has assumed a perpetual liability.

The Beaufort County Open Land Trust manages a dedicated Stewardship and Defense Fund to provide a long-term source of income to cover future costs associated with monitoring and managing our portfolio of conservation easements. The fund is also available to cover extraordinary expenses associated with managing, upholding or defending an easement should its terms or validity be violated or threatened. Contributions to the stewardship fund are pooled from a number of sources, including landowners, and are managed judiciously.

The Stewardship and Defense Fund is restricted solely to covering the costs of monitoring and defending our conservation easements. It enables us to make annual monitoring visits to each property and most importantly, it will insure our ability to take whatever actions are necessary to uphold the terms of every easement.

Each conservation easement donor is requested to provide a donation to the Stewardship Fund. The amount of the donation is determined by the donor, and the Land Trust will make a suggestion, based on the appraised value of the easement (typically between 2 and 5 percent of the value of the easement).