

TAR RIVER LAND CONSERVANCY

Conservation Options

This section summarizes the options available to landowners for conserving their land.

Points of Consideration

One may wish to consider the following points in deciding the appropriate approach to the land:

- Your current management goals and vision for your property's future;
- Protection of all or a portion of the land;
- Your preference regarding the type of entity to conserve your land (protected in private ownership, by a tax-exempt conservation organization, or a governmental agency);
- Consideration of a sale or a partial or total donation;
- The importance of a possible reduction in income, property, estate or gift taxes;
- Timeliness of protection (presently, over a period of years, or through one's will); and
- The effect of each option on the present generation and future generations of your family's relationship to the land.

[Conservation Easements](#)

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Conservation Easements

Conservation easements are a good option if you want to provide protection for your land while retaining ownership. Restrictions in the easement are written to fit the landowner's objectives for the property and are designed to retain the land's natural, scenic, historic, or open space characteristics and to protect against intentional or inadvertent destruction of those features. A conservation easement may be placed on all or a portion of your property. The easement is recorded like any other title interest that "runs" with the land and once in place, present and future owners of the tract are bound by its terms.

Easements are written to encourage good land stewardship practices and monitoring and enforcement of the easement terms are the responsibility of the organization holding the easement. Given this obligation, the organization holding the easement will visit the property periodically to ensure that the terms of the easement are being adhered to. The landowner may continue to use and enjoy the land the same way as before the easement was entered into, as long as he or she is in compliance with the terms of the agreement.

Landowners grant conservation easements primarily because they wish to protect land which they value and which will be important for its natural features in the future. Financial benefits of granting a permanent conservation easement can also be important. Depending on your own financial situation, a conservation easement may provide positive economic benefits in terms of [income, estate, gift and property taxes](#).

Conservation easements may be donated or sold or be conveyed as a part of your estate. They may be used in combination with the other land protection tools which are described in this summary of options. A landowner may convey a conservation easement to one conservation group, but give or sell the underlying fee interest to another organization or individual. A conservation easement may be donated during your lifetime or by bequest.

A conservation easement donated through your will does not provide you any income tax benefits, but does reduce the taxes associated with your estate. The decision of timing and the details of what rights of ownership are to be conveyed can be negotiated between the owner and the recipient organization. This negotiation ensures that the easement is crafted so that it will achieve your land protection goals and avoids placing the organization in a position of having to refuse an easement that does not meet its conservation objectives or that it can't adequately monitor. An organization is not obligated to accept a bequeathed easement and take on the responsibility of monitoring it.

In addition, staff members of the conservation organization may discuss with you the importance of a [stewardship endowment](#). Stewardship endowments are often requested from landowners pursuing conservation easements with a conservation organization to help cover the costs incurred during the annual monitoring of the conserved property.

Because an easement can take some time to negotiate, you may want to add a codicil to your will stating your intention to grant the easement. In the event of your death before its completion, the executor is instructed to complete the easement. It is always advisable to attach as complete an easement document to the will as is available, granting the executor discretion to make usual and customary modifications required by the recipient organization.

For landowners who face financial uncertainties or family circumstances that make it difficult to give an easement during a lifetime, writing a conservation easement into a will can serve as an ideal method of conveying the desired easement through one's estate.

Options for Donations

Outright Donation

In an outright donation, full title and ownership to the land is given in fee simple now and tax benefits in the form of income tax deductions, potential estate tax benefits, and relief from property taxes are immediate possibilities. A donation of land offers the maximum tax advantages because one may take a charitable gift deduction based on the full fair market value of the property. When the total value of the deduction cannot be taken in one tax year, the remaining deduction may be carried forward for a number of years.

Landowners should consider personal and family goals and the recipient's plans carefully before making the gift. A gift of land may not prevent later development unless all or a significant portion of the property is subject to an easement. Landowners who wish to provide both long-term land protection and financial support for an organization's conservation objectives may be comfortable with the resale of the donated property subject to a conservation easement. If the conservation organization is expected to own the property for the long-term, the landowner should inquire about how it will be managed and how the group will cover the carrying costs of ownership. Some organizations will request a [stewardship endowment](#), funded by either the donor landowner or other gifts, if long-term ownership is planned.

The economic benefits of donating can be achieved by having a [qualified appraiser](#) determine the value of the gift. The donor will no longer pay property taxes on the donated land, and estate taxes will not be incurred for the value of this land. If the landowner intends to make a gift subject to conditions limiting the recipient's future use or conveyance of the property, the potential donor should consult with a financial advisor to ensure that the gift is made in a manner that does not reduce the financial value of the gift.

Donation by Devise and Donation with Reserved Life Estate

Under some circumstances you may wish to donate your land but not give up the use of it immediately. In this case two options are available: donation by devise and donation with reserved life estate.

Donation by Devise: A gift of land through one's will is a donation by devise. The owner retains full use and control over the land while living and knows that the desired protection will be carried out after his or her death. In this case the donor does not receive an income tax deduction, but estate taxes are reduced and heirs may benefit from reduced inheritance taxes.

If you intend to use your will to convey land or a conservation easement on land, you should discuss these plans with the recipient group. The organization should understand your objectives and should have goals which are compatible with yours for the future of the proposed conveyance. You should be sure your wishes are clear to your executor if he or she will be negotiating the terms of an easement and making arrangement for the long-term stewardship of your property on behalf of your estate.

Donation with Reserved Life Estate: This option provides for immediate donation of the land to a conservation organization. The donor will retain use of all or part of the donated land during the donor's lifetime or the lifetime of designated immediate family members. The value of the donation for tax purposes is based on the fair market value of the property less the estimated value of the donor's life interest in the property as determined by Internal Revenue Service tables. These tables are based on the age and life expectancy of the donor and other designated immediate family members who may retain a lifetime interest. Retaining a life estate provides current tax advantages that are less than those of an outright donation but greater than a donation by devise.

Sale of Land or Sale of a Conservation Easement

If a landowner needs to sell the property, he or she may prefer to sell to a conservation organization for a number of reasons. The owner might want the natural values of the land to be protected and/or be used by the public or by a certain group. The owner may feel that a conservation agency is better able to manage or protect it, or the taxes may have risen too high to continue to own it or protect it. In considering a sale, an owner has the option of selling at fair market value, at a bargain sale, or in installments.

Landowners may choose to sell conservation easements at fair market value or less using the techniques described below. In this way one may realize some of the value of real estate assets (providing funds for retirement or reinvestment) while retaining ownership of the land and home or other buildings on the land.

Sale at Fair Market Value

In this case one would receive the full fair market price of the land as determined by a qualified appraisal following required guidelines for government agencies. Keep in mind that TRLC and other conservation agencies have limited funds available for purchasing land and must set priorities for land acquisition. If an owner sells land for its full value and it has appreciated since it was originally purchased, the owner will be liable for income tax on the capital gain. This capital gains tax may significantly affect the net profit from the sale.

Bargain Sale

In a bargain sale the owner sells land to a conservation agency at less than the fair market value.

The difference between the selling price and the appraised fair market value is considered a donation. The owner may then be eligible for a charitable income tax deduction equal to the difference between the full price and the bargain price.

For example, suppose land with a fair market value of \$50,000, is sold to a conservation agency in a bargain sale for \$30,000. The owner would receive \$30,000 and a charitable deduction of \$20,000 for the land value donated. Also, because the land was sold for less than fair market value there would be a smaller capital gain to be taxed. Depending on one's financial situation a bargain sale may be advantageous; as always, one should consult a tax advisor for the most appropriate option.

Installment Sale

In an installment sale the owner sells a portion of the land with an option to sell the remainder in successive years. Income from the sale would be spread over several years, thereby helping to reduce the current capital gains tax.

Sale with Reserved Life Estate

Property may be sold to a conservation agency with retention of the right of lifetime tenancy for an owner and immediate family. The capital gains tax would depend on whether the sale is at fair market value, at bargain sale, or in installments.

Private Agreements

Option

For owners who would like to sell land to a conservation agency, but the agency or land trust has not yet acquired the funds to close on the property, an option agreement may be appropriate. An option agreement also ensures that the land trust, or other agency, has the opportunity to purchase the tract at a given price and within at a mutually agreed upon time period. This agreement does not obligate the agency to purchase your land, but it does guarantee the conservation agency the opportunity to purchase your land.

Right of First Refusal

For owners who would like to sell land to a conservation agency, but the agency is unable to purchase it immediately a right of first refusal could be a helpful alternative. This agreement neither obligates the agency to purchase your land nor does it set a sale price. However, it does guarantee the conservation agency the opportunity to purchase your land. If another party offers to buy the land, the owner is legally bound to allow the conservation agency the chance to match an offered price.