

# Conservation Easements

**What is a conservation easement?** A conservation easement is a legal agreement between a landowner and a land trust or county farmland protection board that permanently protects the scenic and natural qualities of the land while allowing the private landowner to continue to own and enjoy his or her property. The landowner retains the title to the property and continues to use it, subject to certain, specific voluntary restrictions that protect the land from future real estate development or commercial or industrial use.

**How long does a conservation easement last?** Because an easement protects the land in perpetuity, all future landowners are bound to the restrictions. The easement is created in the form of a deed. This Deed of Conservation Easement is recorded in the county land records. Because it is recorded with the property deed records, future landowners are put on notice of the land protections that have been recorded.

**Who owns the land?** The easement donors continue to own their property, retaining authority just as they did before the easement was recorded, subject to the restrictions in the easement. The land can be transferred, sold, and inherited as it was before.

**What is the value of a conservation easement?** The difference between fair market value of the land before the easement is created (the land's "highest and best use") and the value of the land after the easement represents the fair market value of the conservation easement. Easement value is created most often by giving up the residential development rights associated with the land. Landowners who want payment or wish tax benefits must obtain a "qualified appraisal" to determine this value.

**Payment?** A county Farmland Protection Board (FPB) can pay for all or part of the easement value, subject to availability of funds (generated by the real estate transfer tax, or private donations). Applications are scored according to criteria established by the WV Voluntary Farmland Protection Act. The FPBs may be able to obtain matching funds from the USDA Natural Resources Conservation Service or, if the property is in a congressionally-recognized Civil War battlefield, from the American Battlefield Protection Program.

**Tax Benefits of a Conservation Easement?** Under the IRS code, qualified easement donations to a non-profit organization can be treated as charitable gifts. If the property has been owned for more than one year, the portion of the value of the donation not paid for can be deducted against up to 30 per cent of the donor's income, with any excess carried forward for up to five years. (An enhanced deduction, permitting deduction against up to 50 per cent of income, is in effect through 2013 and could possibly be reinstated.) There are also potential estate tax benefits, since donation of an easement can reduce the value of the property upon which estate taxes are calculated. Finally, West Virginia Code specifies that land under a conservation easement should be taxed as agricultural land. If the Property is not already receiving farm-use valuation, this can result in lower property taxes.

## A BRIEF LIST OF GENERAL RIGHTS & RESTRICTIONS FOR CONSERVATION EASEMENTS

### RIGHTS:

1. Reside on the property and benefit from all aspects of the quiet enjoyment of the property
2. Engage in personal recreational uses that require no development
3. Engage in any and all agricultural uses of the property
4. Right to maintain, construct, and place agricultural structures contributing to production (limited by the maximum square footage for impervious surface.)
5. Businesses directly related to the retail of farm products
6. Activities for religious, charitable, or educational purposes or to foster tourism
7. Home based businesses (Requiring no Environmental Protection Permit)
8. Non-commercial forestry (on site)(limits)

### RESTRICTIONS:

1. Dwelling & appurtenances contained inside a 2-acre parcel, limited to 5,000 square feet per dwelling; 9,000 square feet for the entire 2-acre parcel
2. Subdivision of land is prohibited
3. Impervious surface for the entire eased area is limited to 2% of the total square footage.
4. Ditching, draining, dike construction, filling, excavating, removal of topsoil or sand, gravel or rock on the property is prohibited.
5. No commercial forestry is allowed.
6. Except for agricultural structures, no constructing or placing of any buildings; manufactured homes; swimming pools or other recreational facilities; commercial lighting or any temporary structure or facility on or above the premises
7. No advertising signs or billboards
8. No trash, garbage, hazardous substances, abandoned vehicles or machines
9. No underground or above ground public utility systems
10. No pollution or alteration of wetlands or water bodies
11. Construction of new farm ponds: size predetermined on the deed of conservation easement.
12. No right of access is conveyed by conservation easement to the public
13. Easement holders inspect property annually to confirm compliance to the conservation easement.
14. Taxes are to be paid before delinquency
15. Subsequent property transfers must include all provisions of the initial conservation easement