



## RIVER FIELDS

### Conservation Easement Fact Sheet

#### **What is a conservation easement?**

A conservation easement is a practical way for private landowners to protect environmentally significant land while retaining their ownership. Easements provide permanent protection from land use that could damage or destroy its scenic, recreational, ecological, and natural resource values.

In most cases, the landowner donates an easement to a non-profit conservation organization or public agency, which enforces the restrictions in perpetuity. Each easement is tailored to fit the natural characteristics of the land, the personal needs of the owners, and the objectives of the organization or agency. An added benefit to the landowner is the possibility of a substantial income tax deduction that comes as a result of donating the easement. Also, the landowner may realize a reduction in estate taxes after donating certain qualified easements.

#### **How is my land ownership affected by a conservation easement?**

A conservation easement is a legal agreement between a landowner (the grantor) and a conservation organization or agency (the grantee). The agreement separates the rights to exercise more intensive uses - such as construction, subdivision, and mining - from other rights of ownership. These "development rights" are then transferred to the grantee through the conservation easement deed. The grantee agrees to hold, but not to use the development rights and to ensure that they are not used by anyone else. Conservation easements are granted in perpetuity and apply to the land regardless of who may own it in the future. **Land under easement is still privately owned and managed.** Typically, it is used for agricultural, forestry, wildlife habitat, scenic views, watershed protection, recreation, education, or personal residence. The landowner and the grantee work together to determine the appropriate land uses, which are then detailed in the easement instrument.

#### **Does granting a conservation easement give the public the right to enter my property?**

Not unless you allow it. Most easements let the landowner decide whether or not to allow public access. Sometimes a landowner gives the public rights to cross the property as part of the easement agreement. This right is usually granted when part of the land traditionally has been used as a public trail or access point to a public pond or lake.

#### **Does the easement restrict my ability to sell, devise, or give my land in the future?**

Land protected by easement can be sold, given, or otherwise transferred at any time. Such transfers will not affect the integrity or enforceability of the easement. This is one of the key benefits to protecting land through a conservation easement.

### **What are the potential financial benefits to donating a conservation easement?**

Income Taxes: Donation of certain development rights to a qualified organization like River Fields can constitute a tax-deductible charitable gift. To be deductible, an easement must meet certain minimum conservation objectives established by the federal government. The value of the gift, determined through a qualified appraisal, is equal to the difference between the fair market value of the property before and after the easement is donated.

River Fields is currently working with other land trusts to pass Federal legislation increasing tax incentives for conservation easement donation. These incentives would raise the deduction a donor can take for a qualifying conservation easement from 30% of their adjusted gross income in any year to 50%, allow qualifying farmers and ranchers to deduct up to 100% of their income, and extend the carry-forward period for a donor to take tax deductions from 5 to 15 years. If passed, these enhanced tax incentives may only be available for donations made in 2010.

Estate Taxes: State and federal inheritance taxes on unrestricted land are often so high that the heirs are forced to sell some or all of the land just to pay these taxes. Because an easement reduces the value of the property and therefore the value of the landowner's estate, the inheritance taxes are also reduced. Thus, an easement may enable heirs to keep land they would otherwise have to sell.

Gift Taxes: When a landowner gives land to a family member, the gift is subject to federal gift taxes if its value exceeds the maximum tax-free amount. Lowering the value of the land through an easement may allow the owner to give more land in any one year without creating a gift tax, or it may help reduce the amount of tax owed.

### **How are Conservation Easements enforced?**

The grantee organization or agency must monitor easement-protected land at least once a year to determine that the restrictions have not been violated. Careful monitoring records and photographs are maintained by the grantee.

If the grantee discovers a violation during monitoring, the organization immediately notifies the landowner and takes steps to halt the violation and rectify any damages. Specific procedures for this enforcement are outlined in the easement document. Often, another organization will be given back-up or executory interest in the easement to prevent violations if the grantee becomes unable to carry out its responsibilities.