

Your Land. Your Legacy.

Protect Your Land with a Conservation Easement



Conserving our land and water resources; making an environmentally healthy and economically prosperous region; and creating a high quality of life now and for future generations.





Conservation Agreements: The Voluntary Protection of Land

If you own land with important natural resources, a voluntary conservation agreement can protect the land you love while you continue to own and manage it for traditional uses. You may also realize significant tax benefits.

A conservation agreement (also called a conservation easement) is a contract between a landowner and a qualified land trust, which allows the owner to permanently restrict certain undesirable uses on their property. It is also a useful tool to landowners who plan to gift or sell their land, but want to ensure it is used in intended ways.

This agreement is permanent and remains with the land even after it has been sold, gifted, or willed to heirs. Conservation agreements typically prevent land uses such as residential subdivisions, commercial or industrial operations, and mining, while allowing traditional rural land uses, such as farming, grazing, hunting, and timbering. The terms of a conservation agreement are negotiable, and vary greatly depending on the landowner's intentions for their property and the conservation values being protected. A conservation agreement never allows public access unless it is the express desire of the landowner.

Our **culture**,
 Our **community**,
 Our **sense of place**.

These are all tied
 inextricably to the land.

The Land Trust Program
 seeks to partner with
 landowners protect those
 incredibly special places
 that contribute to the
 culture and sense of place
 of their communities.





Upstate Forever Guidelines

These guidelines provide the basic criteria for determining what properties are eligible for protection through a conservation agreement with Upstate Forever.

Focus Area: Greenville, Spartanburg, Anderson, Pickens, Laurens, Greenwood, Oconee, Union, Abbeville and Cherokee Counties. In addition, we will consider conservation agreements in Newberry County if the property is in the Saluda River watershed, and in North Carolina and Georgia if the property is located within a watershed that drains into a river, stream, or lake located within any of the above South Carolina counties.

Priority Properties: Upstate Forever has identified the following priority areas in the region for protection:

- Tracts of 100 acres or more.
- Tracts of 50 acres or more that adjoin other conservation properties.
- Tracts of 50 acres or more that adjoin significant rivers, streams and wetlands.
- Tracts of 30 acres or more that are within the viewshed of Highway 11.
- Tracts of 30 acres or more that are within the Blue Ridge Mountains.

Other tracts identified and approved by the Land Trust Committee.

IRS Conservation Purpose

In order to qualify for a federal tax deduction, a conservation agreement must be made exclusively for one or more of the following conservation purposes:

- Preservation of land for outdoor recreation by, or the education of, the general public;
- Protection of relatively natural habitat or ecosystem;
- Preservation of open space, where there is significant public benefit, and (1) the preservation is for the scenic enjoyment of the general public, or (2) pursuant to a clearly delineated Federal, State or local governmental conservation policy; and
- Preservation of historically important land area or a certified historical structure.

Further, Upstate Forever will not participate in a project that does not meet one or more of these conservation purposes.



*“What I stand for
is what I stand on.”*

-Wendell Berry



Reserved and Relinquished Rights

Through a conservation agreement, the landowner and Upstate Forever define reserved rights (those that the current and future owners will continue to have under the conservation agreement) and relinquished rights (those given up through the signing of the conservation agreement). The following are examples of a few reserved and relinquished rights typically associated with conservation agreements.

This list is just a starting point for a landowner considering a conservation agreement. Each conservation agreement is unique and the terms are negotiable. The negotiation of reserved and relinquished rights is a balance between the conservation values being protected and the reasonable activities the landowner (and future landowners) may wish to exercise on the property. Upstate Forever encourages landowners to be very thoughtful in their consideration of proposed reserved and relinquished rights and be far-sighted in their planning. The reserved rights described below are simplified examples and will have further details or conditions in the actual conservation agreement document.

Typical Reserved Rights:

Residences and Structures

- Maintain, repair, improve, and replace or expand all existing structures.
- Construct and maintain x new single family residences; each not to exceed a footprint of x square feet.
- Construct and maintain garages, sheds, and other ancillary structures associated with each residence; total ancillary structure size per residence not to exceed a footprint of x square feet.
- Collectively, existing or new decks, patios, and other impervious surfaces associated with each residence shall not exceed x square feet in footprint.

Subdividing

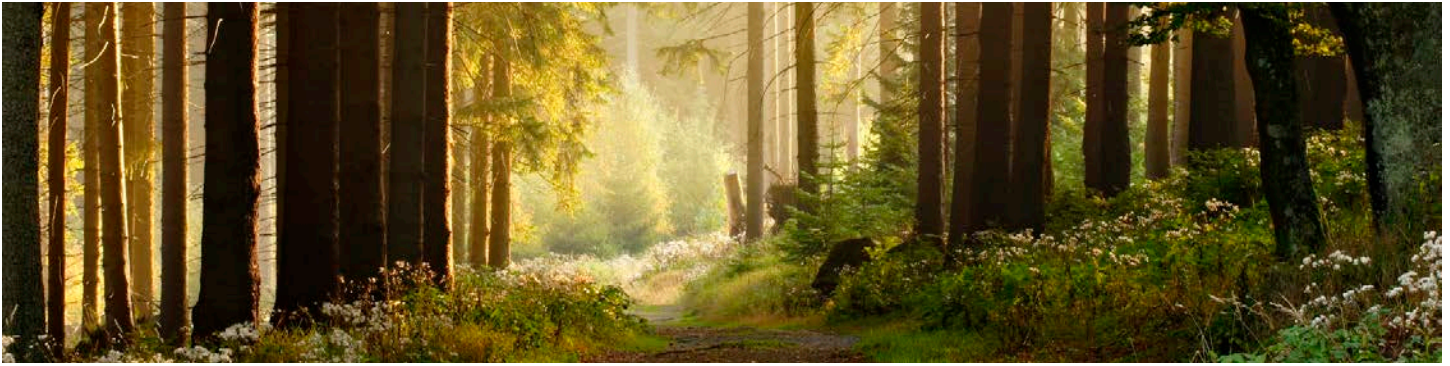
- The property may be subdivided into no more than x parcels to provide a home site for each of the permitted residences.

Forest Management

- Landowner may harvest timber and conduct forest management in accordance with a forest management plan prepared by a registered forester that meets Best Management Practices, is designed to protect the conservation values of the property, meets all terms of the conservation agreement, and is approved in writing by Upstate Forever.

Agricultural Activities

- Landowner may continue current agricultural uses and initiate additional agricultural activities subject to a conservation plan meeting the National Conservation Practice Standards and other guidelines that is prepared by a professional and approved by Upstate Forever. May construct and



maintain barns, sheds, and other ancillary structures associated with agricultural uses, not to exceed a total footprint of x square feet.

Roads, Bridges, and Trails

- May maintain all existing roads, bridges, and trails. New roads and bridges may be constructed as required to serve reserved rights. Trails may be constructed with some defined restrictions.

Typical Relinquished Rights:

Industrial or Commercial Use

- Some limited commercial uses may be permitted.

Commercial Activities

- Right to lease for hunting, fishing and agriculture permitted.

Residential Subdivision Development

Riparian Buffers

- The area within 100 feet of a river, stream, or other water body are protected from cutting and other disturbances, with limited exceptions.

Signs and Billboards

- Limited in order to protect the scenic values of the property. Some signs are permitted in keeping with the land use and conservation values of the property.

Mining and Mineral Development

Waste Dumps

Alteration of Land Surface

- Prohibited except as necessary to exercise reserved rights, such as residence construction.



Upstate Forever is Land Trust Accreditation Commission Accredited.

The accreditation seal recognizes land conservation organizations that meet national standards for excellence, uphold the public trust, and ensure that





Potential Tax Benefits

Deciding to donate a conservation agreement is a great way to protect a beloved place. It is also a major financial decision, as the donation involves giving up part of the value of the property, which is often a family’s biggest asset. Tax incentives offset some of that loss.

A landowner wishing to claim a tax deduction must satisfy the requirements of the Internal Revenue Code and relevant state laws. This includes obtaining a conservation agreement appraisal from a qualified appraiser. This appraisal will provide several values: a “before” value that shows the property’s value at its “highest and best use” (the amount it could be sold for before the conservation agreement); the “after” value, or the value it would have under the terms of the conservation agreement; and the “conservation value”, which is the difference between the before and after values. The landowner’s tax deduction is based on the conservation value of their property.

Hypothetical Example: “Pickens Farm”

200 acre farm and forest preserved with the ability to maintain current residence, garage, barn, and hay barn, and build a limited number of additional agricultural structures. A buffer of 100’ of vegetation will be maintained along the river running through the property and that area will remain undisturbed. Farming, timber management, and hunting will continue.

Appraised Values:

Highest Best Use (Before Conservation Agreement)	(\$5,000 x 200) = \$1,000,000
w/Conservation Agreement (After)	(\$3,000x200) = \$ <u>600,000</u>
Conservation Value (Federal Tax Deduction)	\$ 400,000
 State Tax Credit	 \$ 50,000

Federal Tax Deduction

The Federal tax deduction is based on the appraised Conservation Value. Under current law, the total amount deductible in any one year may not exceed 50 percent of adjusted gross income (AGI), or for qualifying farmers, 100 percent of AGI. If it exceeds 50 percent, it can be carried forward for up to fifteen additional years.

In the case of newly purchased property, the new owner must wait at least one year to take advantage of deductions above the purchase price of the property (purchase price vs. appraised value).

This is a highly simplified example of the possible tax benefits of a conservation Agreement. The landowner should consult with his or her own attorney, financial advisor and appraiser to determine the availability and extent of any tax benefits of a particular conservation plan. In order to qualify as a tax-deductible contribution the Agreement must meet at least one conservation purpose as defined by IRC § 170(h)(4)(A).



South Carolina State Tax Credit

The South Carolina Conservation Incentives Act (S.C. Code Ann. Section 12-6-3515) provides that landowners who have qualified for and claimed on their federal income tax return a charitable deduction for either a gift of land for conservation or the granting of a conservation agreement on their land may claim a state tax credit, which is a dollar-for-dollar reduction in the amount of South Carolina income tax owed.

The amount of the state credit is equal to 25 percent of the total amount of the federal deduction, subject to two caps: the credit cannot exceed \$250 per acre, and the total amount of the credit used in any one year cannot exceed \$52,500. Any unused credit, however, can be carried forward to succeeding taxable years.

There is one other notable aspect of the law: the credits can be transferred or sold. This means that a landowner who may not need the tax credit can give or sell it to another person, provided the transaction is approved by the South Carolina Department of Revenue. There are brokers who assist in the buying and selling of state tax credits.

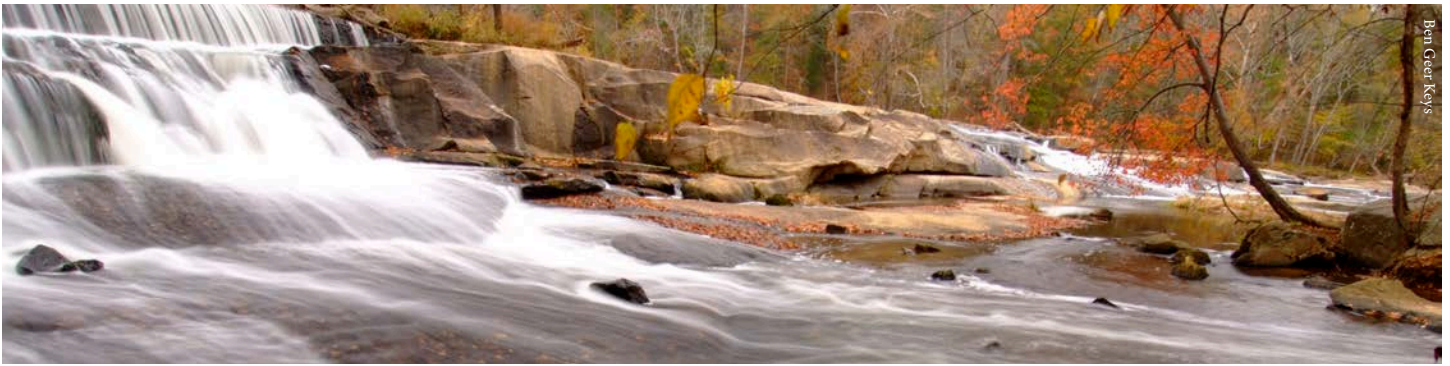
This is a remarkable benefit, and according to the Land Trust Alliance, South Carolina is in the top five states in the nation for “most powerful state tax incentives for conservation”.

Estate Tax Benefits

A conservation agreement can reduce estate taxes in two ways:

- It reduces the value of the estate to be taxed. A conservation agreement lowers the property value – and, correspondingly, estate taxes. In some cases, a conservation agreement may drop the value of the estate below the threshold for estate taxes altogether.
- Heirs can exclude 40% of the value of land under conservation agreement from estate taxes. Section 2031(c) of the Internal Revenue Code provides an estate tax exclusion of up to 40% of the encumbered value of land (but not improvements) protected by a “qualified conservation agreement.” That exclusion is capped at \$500,000. The cap is lower if the conservation agreement reduced the land’s value by less than 30% at the time it was donated. To qualify, the conservation agreement must serve one or more of the conservation purposes recognized in Section 170(h) of the tax code. It must limit commercial recreational use to a minimum and it cannot qualify solely for the purpose of historic preservation. Only members of the original conservation agreement donor’s family, including spouses and descendants, can claim this exclusion.

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Ben Geer Keys

Conservation Agreement Process

If you are interested in placing a conservation agreement on your property, the first step is contacting the Upstate Forever Land Trust staff by e-mailing landtrust@upstateforever.org or calling (864)250-0500 ext. 23 or 26. However, here is a broad overview of the process and frequently asked questions.

Timeline: All the steps needed to complete a conservation agreement generally take at least three months, often considerably longer. This is a thoughtful process, and should not to be rushed. Once recorded, conservation agreements are exceedingly difficult to impossible to alter.

Steps: The process is broken down into several broad phases. Initially, the landowner and Upstate Forever have discussions to determine if we share compatible goals. If all agree to proceed with a conservation agreement, reserved and relinquished rights are defined and the conservation agreement is drafted. It is typical to go through many drafts before finalizing. Next, a survey, appraisal, title work, and other requirements are ordered and completed as needed. A complete checklist will be provided by Upstate Forever. A baseline report describing the condition of the property at closing is created by Upstate Forever and signed by all parties. Finally, a closing date is set and conducted by the landowner's attorney, all final documents are signed, and the conservation agreement is recorded. This is a highly simplified summary of the process, but gives a sense of the steps involved.

Costs: The costs can vary based on many factors, including the extent to which a landowner involves attorneys and other advisors and whether a new survey of the property is required. Also, if the landowner wishes to take a tax deduction, a conservation agreement appraisal is required. Upstate Forever requires a fee for the transaction (typically \$1,000, but this sum can vary for complex or funded projects) and requests a one-time, tax-deductible contribution to our Land Trust Endowment Fund, a separate fund that is used to help us meet the costs of perpetually monitoring and enforcing conservation agreements - a process called stewardship. The endowment request is calculated based on estimated costs of stewardship of the property, and thus varies. Ideally, the financial benefits of a conservation agreement outweigh the costs, but Upstate Forever advises all landowners to weigh the costs and benefits of their individual situation, or have a trusted advisor do so on their behalf.



Bill Robertson



Bill Robertson



Lezlie Barber, Architects LLC



Other Land Protection Options: Although the conservation agreement is the most widely used tool for preserving private land, and is the protection method used by Upstate Forever, there are several other options. One is a deed restriction, which is a legal instrument through which restrictions can be placed on a property, similar to a conservation agreement. One major difference between the two is that no third party ensures perpetual enforcement of a deed restriction, as is the case with a conservation agreement. Also, a deed restriction is more easily challenged. More deference is given to a conservation agreement. When deed restrictions are interpreted by a court, the least restrictive interpretation is often applied if the language is disputed or is unclear. Still, this is an option to consider for land that does not meet the criteria for protection of a conservation agreement, or where a conservation agreement is otherwise not a viable option.

Another protection method is an outright donation of land or a bargain sale, in which the owner transfers title to a nonprofit or a government entity. Upstate Forever does not typically protect land in this way, but if you are interested in this, we can attempt to direct you to a group who might be an appropriate owner. Most nonprofits or government agencies will have criteria for land they receive as gifts or purchase for protection to ensure it fits within their budget, plans and vision.

Though these other options are sometimes appropriate, the protection of the Upstate's rural character relies on the permanent protection of privately owned farm and forest lands through the strongest tool possible: the conservation agreement.

Stewardship

Once a conservation agreement is recorded, Upstate Forever and the landowner must ensure that its terms are upheld. That is achieved through annual monitoring visits and a continued relationship with the landowner.

The conservation agreement gives Upstate Forever the right and responsibility to enforce the agreement. The conservation agreement does not give Upstate Forever the right to use the property, or control its use beyond assuring that the conservation agreement is honored.





A Word from the Land Trust Director

At Upstate Forever, we appreciate the significant decisions you’re facing when considering a conservation agreement. We want to provide you with as much information as we can to inform the best decision for you, your family, and your land. An advisor you trust can help you consider the matter from all angles.

Often, landowners who have already protected their land are the best advocates for conservation agreements, as they can speak to the complete process, how it has been to live with the conservation agreement in place, and whether they feel it achieved

their goals. Here you can read the experiences of a few, but Upstate Forever is also happy to put you in touch with a conservation easement landowner if you have further questions.

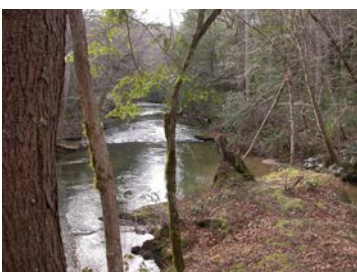
Thank you for taking the time to learn more about conservation agreements. It may be an answer for you and your family, and a gift to your community and future generations. Please don’t hesitate to call us if we can help you explore this possibility.

Scott Park
spark@upstateforever.org
864 250-0500 x26

Landowner Testimonials

“I grew up in Owings in Laurens County, swimming in creeks and rivers, playing in fields and forests, looking at constellations at night. When my husband Charles and I moved back home in 1980, we bought 187 acres in the country east of Gray Court - Timber Creek Farm. It is home - all our memories of raising our boys are here. We love this place and wanted it to always remain natural, so we protected it with Upstate Forever.”

Dianne Culbertson
Owner of several protected properties,
Laurens County



“My daughters and I wanted to make sure that this green space and wonderful wildlife habitat would be here forever. I hope other owners who really care about their property will consider doing the same thing.”

Laura Townes
Owner of property along the South Saluda River,
Greenville and Pickens Counties



“The biggest reason we decided to do a conservation agreement was that there are places on our property we want to preserve the way they are. I am the fourth generation of my family on this farm, and the fifth generation is also very interested in keeping it like it is. We don’t want to see it subdivided, cut up into strip malls, or turned over to any kind of industry.”

Mac McGee
Owner of Double M Farm,
Anderson County



“Conservation easements are good for people that want to keep their property intact. It allows them to use it in a way that is good for them, but it also becomes a partnership with Upstate Forever. The property is protected, but it also allows you to use it for your intended purposes and not feel pressured to develop it for economic reasons.”

JB Garrett
One of the Owners of Riverbend Shoals
Greenville County

“Unless something is done, this beautiful highway could end up looking like Woodruff Road. We don’t own much land, but we wanted to do what we could to prevent that from happening.”

Kent and Lynn Davis
Owners of property along Highway 11,
Greenville County



“Marie and I feel more like trustees of this property than owners. It’s very important to us that this wonderful place remain protected long after we’re gone.”

Robert Gregory
Owner of Four Columns Farm
Spartanburg County



Who We Are What We Do

Upstate Forever's vision for the Upstate is to to conserve our land and water resources, resulting in an environmentally healthy and economically prosperous region, with a high quality of life now and for future generations. Our mission is to promote sensible growth and protect special places in the Upstate region of South Carolina.

Our goals are to develop clean water and abundant green space across the entire Upstate; encourage a pattern of development with reduced fiscal and environmental impacts; and support fully informed and engaged citizens throughout the region.

We focus our work on the ten Upstate counties of Abbeville, Anderson, Cherokee, Greenville, Greenwood, Laurens, Oconee, Pickens, Spartanburg and Union through our three programs: Clean Water, Land Policy, and Land Conservation.

The Land Conservation program works with landowners to ensure the voluntary, permanent protection of special places in the Upstate.

We believe the Upstate is one the most beautiful places on earth and want to keep it that way forever!

If you own **land** with important natural or historic resources, a **voluntary** conservation agreement can **protect** the land you love while you continue to own and manage it for traditional uses like **farming** or a **family** residence. You may also realize significant tax benefits.



(864)250-0500 landtrust@upstateforever.org