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# Conservation Easements: A Powerful Land Use, Estate, and Tax Planning Tool

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Conservation easements are legal agreements that restrict property use for ecological, open space, farmland preservation, or other similar purposes, typically "in perpetuity" (which means "forever," at least in theory). In Washington State, conservation easements may be sold or donated to nonprofit land trusts, counties, cities, tribes, or other eligible entities. As explained below, a landowner can derive a variety of estate planning and tax benefits from the sale or donation of a conservation easement, including a potential reduction in federal income taxes, estate taxes, and/or gift taxes.

*Income tax*. One of the most important incentives encouraging landowners to donate conservation easements is the federal Conservation Tax Deduction, which allows a landowner to deduct all or part of the value of a donated easement from its taxable income. The value of the easement is determined by appraisal, and is equal to the difference in the value of the property before and after the easement. As explained in our January 2016 newsletter, enhanced tax incentives for donations of conservation easements are now "permanently" available, thanks to the omnibus spending bill signed into law by President Obama on December 18, 2015. Without the enhanced incentive, a landowner could deduct the value of a conservation easement, up to an annual maximum of 30% of his or her adjusted gross income (AGI), over a period of up to 6 years. The enhanced incentive raises the maximum annual deduction for donating a conservation easement to 50% of the taxpayer's AGI in any year, allows qualified farmers and ranchers a deduction equal to as much as 100% of their AGI, and allows deductions to be spread over a term lasting up to 16 years.

*Estate Tax*. Landowners may also derive certain estate tax benefits from the sale or donation of a conservation easement. By conveying a conservation easement (whether by sale or donation) prior to death, the landowner will reduce the value of the property, resulting in a reduction in the landowner's taxable estate at the date of death. In addition, some landowners may be eligible to exclude up to 40% of the encumbered value of land (but not improvements) protected by a conservation easement from their taxable estate, and/or for "special use valuation" of certain farmland and ranchland, even if it is included in the decedent's taxable estate.

*Gift Tax*. Finally, landowners who donate a conservation easement (including "bargain sale" donations involving a sale for less than fair market value) may be eligible for a gift tax deduction. Donations of conservation easements that satisfy IRS requirements for an income tax deduction may also be deductible for gift tax purposes.

Landowners may derive other benefits from selling or donating a conservation easement, including the personal satisfaction of knowing that ecologically sensitive land or valuable farmland has been preserved in perpetuity. Buyers of farmland protected by conservation easements will benefit from a reduced purchase price, facilitating the transfer of working farms to the next generation of farmers. Families may also be able to keep family land holdings intact by, for example, using the funds from the sale of an easement to fund a "buy-out" of family members who prefer to have cash rather than retaining an interest in the land.

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## For more information

For more information about conservation easements, please contact Duncan Greene in our Seattle office.

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