



*Conservation Easements:  
Protecting Archaeological Sites and  
Historic Buildings on Private Lands*



**Bureau of Archaeological Research  
Division of Historical Resources**



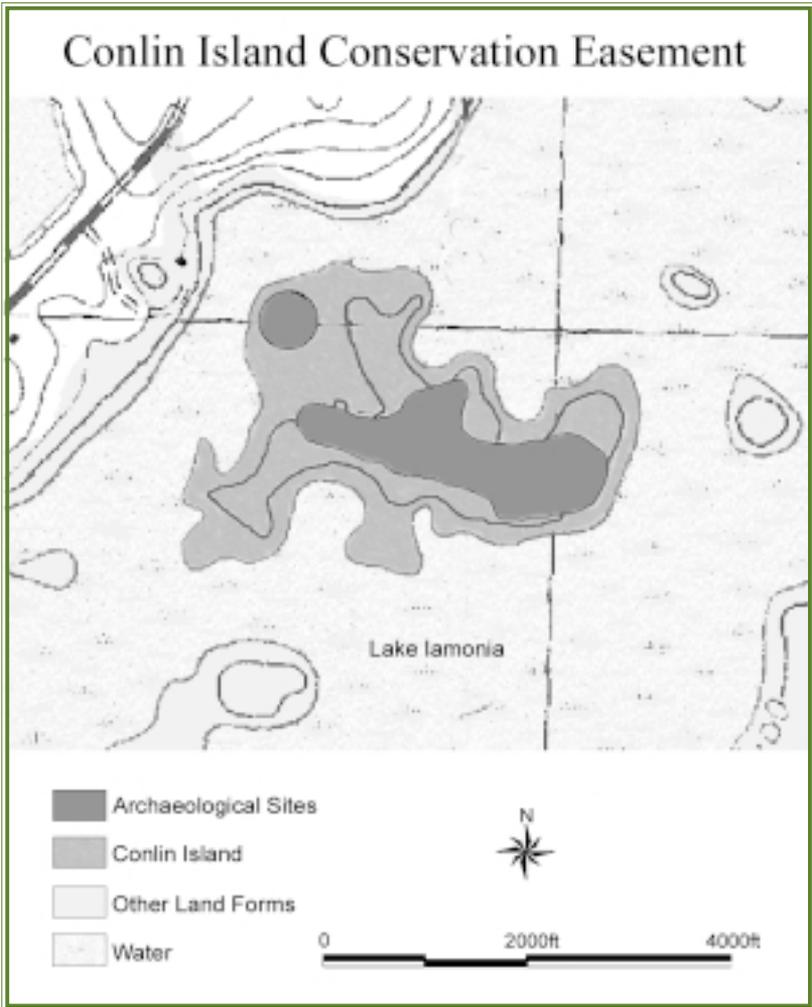
## Introduction

Florida is home to a rich variety of historical and cultural resources. They include 12,000 year old Native American sites, the remains of early European settlements, and more recently, Mediterranean Revival homes and Art Deco buildings. While many significant historic structures and archaeological sites are in public ownership, private landholders own significantly more, and thus, are able to preserve these tangible remains of Florida's past for the future. If you own an historic building or an archaeological site, you can play an active role in its preservation by placing a conservation easement on your property. A conservation easement offers property owners flexibility in land management while at the same time protecting some of Florida's history. Additionally, it can afford property owners tax benefits.

Conlin Island conservation easement, located in Lake Iamonia near Tallahassee, FL, includes the protection of cultural resources. State of Florida archaeologists found this artifact at Conlin Island during an archaeological survey conducted in partnership with Red Hills Conservation Program of Tall Timbers Research Station. The artifact is a pinched-rim sherd of Lake Jackson Plain style, placing it in the Ft. Walton Period, ca. 1250-1450 AD. Norwood Plain and Deptford Plain sherds, along with lithic artifacts recovered suggest that Conlin



Island may have been inhabited as early as 2500 years ago. Often surveys are conducted on conservation easements to determine what resources exist on the property and where they are located. The Conlin Island Conservation Easement map (next page) shows the location of archaeologically sensitive areas found during the archaeological survey of the island. Each property being placed under conservation easement is assessed based on the needs of the owner. Sometimes extensive surveys will be conducted, and, other times, just a walk around the property is all that is required.



## *What is a conservation easement?*

Conservation easements may apply to a variety of resources. Broadly applied, a conservation easement is a legal agreement a property owner makes with a nonprofit or government organization to protect cultural and natural resources on his property. A property owner holds a certain number of rights, such as the right to subdivide his land, restrict its access, or construct a building on it. By agreeing to place property under a conservation easement, the property owner, or “grantor,” agrees to donate, lease, or sell some or all of these rights to a nonprofit organization. This organization

becomes the easement holder or “grantee,” who is responsible for monitoring the property for activities that would be contrary to the conditions of the easement. Depending on the resources they protect, conservation easements are known by several different names. For example, an agricultural easement would protect a family farm. Types of conservation easements commonly used to protect historic buildings and archaeological sites are the primary focus of this pamphlet and include historic preservation easements and open space or scenic easements.

## *Why place a conservation easement on your property?*

Conservation easements are uniquely tailored to meet the needs of the individual property owner. They allow property owners to protect specific resources on their property while retaining ownership. An owner can choose which portions of the property he wishes to protect and which to exclude from protective covenants of the easement. He may also wish to allow limited public access, such as historic house tours or recreational activities, like hunting and fishing, provided they do not endanger the protected area of the property. Such limitations would be included in the terms of the easement.

Creating historic preservation easements and open space and scenic easements on your property may ensure the preservation of historical resources as a legacy for future generations. Furthermore, they have the potential, through public access, to provide a community with many educational benefits. Economic benefits to conservation easements also exist. Tax incentives may include reduction in property, estate, and federal income taxes.

## *What types of conservation easements protect historical and cultural resources and how are they used?*

Historic preservation easements and open space or scenic easements are generally used to protect historic structures and archaeological sites.

### *Historic Preservation Easements*

Historic preservation easements may protect both historic structures and archaeological sites. There are two categories of historic preservation easements.

#### *1. Exterior or Façade Easements*

This type of easement protects the outside appearance of a building. Usually it restricts alterations or additions to a structure that may harm its integrity and historic character.



*The Matheson House, in Gainesville, FL, is held under an exterior or facade easement by the Florida Trust for Historic Preservation.*

Typically, the lot and air rights (development rights for construction of additional stories to a building) are covered by this easement. For example, an owner would agree not to add stories or additions to his property, if the alterations would change the appearance of the building and compromise its architectural style and historic quality.

## 2. Interior Easements

This type of easement protects some or all of the interior of a building. It has the most utility in commercial, public access areas where preservation of historic interior elements is required by the Secretary of the Interior's Rehabilitation Guidelines. Compliance with these guidelines is necessary to qualify for federal investment tax credits.

### *Open Space or Scenic Easements*

This type of easement protects the open space or scenic vista associated with a historic structure to preserve its historic character. Open space or scenic easements are also commonly used to protect archaeological sites,



*Top: While surveying Foshalee Plantation conservation easement near Tallahassee, State of Florida archaeologists locate artifacts and use Global Positioning System (GPS) to map the location of artifacts.*

Open space and scenic easements protect historic structures and

archaeological sites by prohibiting activities that would negatively affect the appearance of a landscape, and, in turn, the cultural resources associated with it. For example, the construction of a housing development would have a negative impact on the integrity of an open pasture. Placing the pasture under an open space easement would not only protect it and its scenic vista, but also an archaeological site that might be located there. Open space and

particularly in cases where an archaeological site cannot qualify for a historic preservation easement under the IRS code.



*Above: A cemetery is recorded while surveying Foshalee.*

scenic easements also qualify for federal income tax deductions under the IRS code.

Development restrictions for archaeological sites need only prohibit activities that would disturb archaeological remains. Easement terms protecting an archaeological site located in an open field may stipulate that the field may be plowed for farming purposes, as long as the depth of the plowing does not penetrate the site. Similarly, a parking lot or golf course fairway may cover a site, allowing the area to be used while protecting the site. Installation of an in-ground pool, for example, would be restricted to areas of a property that are outside of the boundaries of the protected site.

The grantor can also limit road and other construction activities, dumping of waste, land clearing, damming of streams or filling of wetlands, and the placement of most signage, to protect the aesthetic quality and historic and cultural character of the property.

## *What should a Conservation Easement include?*

Conservation easements protecting historic structures and archaeological sites should include the following information:

- An introduction explaining the reason for creating the easement
- A section explaining the historic importance of the property
- A description of the intentions of both the donor and holder of the easement
- A precise legal description of the land and accompanying photographic documentation. This section is extremely important, as it defines the legal boundaries of the easement
- A series of regulations and protective measures, as well as a description of the affected parts of the property
- An explanation of site monitoring
- A clause concerning potential default on a mortgage
- A clause providing enforcement of the easement by its holders.

Most easements are crafted so that the easement holder has final approval over any changes made by the owner that may affect the protected area.

# *What are the tax incentives for conveying an easement?*

Three types of tax benefits are available to owners who wish to place their property under a protective easement. These are:

## **1. Property taxes**

Placing a property under an easement lowers the property's fair market value because it restricts the use of the land. This can result in a reduction of property taxes. State and local law as well as individual tax assessment determine the amount of this reduction. Florida law requires property appraisers to recognize the reduced market value of a property under easement. (See Sections 193.501 and 193.503, Florida Statutes).

## **2. Estate taxes**

Conservation easements allow families to permanently protect their land without giving up ownership. Children who have inherited land from their families often cannot afford the estate taxes and are forced to sell it. By placing an easement on family land that restricts its future development, the property's overall value is reduced, which results in lower taxes.

## **3. Federal income taxes**

A property owner who donates a conservation easement may be eligible for a federal income tax deduction if the property under easement meets specific criteria. According to the IRS code, to be eligible for a federal income tax deduction, the easement must be donated in perpetuity to a qualified organization such as an historical society or a land trust, and for conservation purposes only. The IRS code allows tax deductions for donation of conservation easements in five resource categories:

1. public recreation and/or education
2. significant natural resource
3. scenic enjoyment
4. pursuant to local government policy
5. historic preservation

Two types of cultural resources qualify for historic preservation income tax deductions. These are a "historically important land area" and a "certified historic structure." To be considered "historically important," properties must

meet National Register criteria or be associated with a National Register listed property. This can include a battlefield, a standing structure or an archaeological site. A certified historic structure is one placed on the National Register of Historic Places or listed as a contributing element to a National Register district as certified by the Secretary of the Interior.

In order to receive an income tax deduction using the historic preservation resource category, the property must also be accessible to the public. Accessibility to the public can be as simple as maintaining visibility from the right of way of a property, or in the case of an interior easement, opening the building up for tours.

In some cases, archaeological sites fall under “scenic enjoyment” because of the broad definition the IRS code applies to this resource category. The IRS code, also through broad application, allows archaeological sites to be categorized pursuant to the local government policy. The federal government recognizes local governmental efforts to conserve open spaces, as long as local government, at any level, clearly delineates the types of open spaces it wants to protect.

Florida has established laws pertaining to conservation easements. Section 704.06, Florida Statutes, defines a conservation easement as “a right or interest in real property which is appropriate to retaining land or water areas predominantly in their natural, scenic, open, agricultural, or wooded condition; retaining such areas as suitable habitat for fish, plants, or wildlife; retaining the structural integrity or physical appearance of sites or properties of historical, architectural, archaeological, or cultural significance; or maintaining existing land uses.” The law also stipulates that conservation easements:

- are perpetual, undivided interests in the property.
- are held by governmental agencies or bodies or by non-profit organizations.
- will always be part of the deed and be binding for all future owners.
- can be enforced either through an injunction or proceeding.
- may provide for a third-party right of enforcement (such as a site steward).

- can be affected by actions taken by the owner of the property, the holder of the easement, the person or group designated as having the third-party right of enforcement, or person authorized by another law.

## *How can donating an easement reduce a property owner's income tax?*

The value of an easement donation determines the federal income tax deduction. The value of the easement donation is the calculated difference between the property's fair market value without easement restrictions and its fair market value with easement restrictions. According to the IRS code, any owner who makes a charitable donation of property is eligible to deduct up to 30 percent of his adjusted gross income each year, for a total of 6 years, or until the full amount of the donation has been deducted.

### **Example:**

- \* Appraised fair market value of the property without easement: \$600,000
- \* Appraised fair market value of the property with easement: \$500,000
- \* Amount of easement donation: \$100,000
- \* The property owner is entitled to a charitable deduction of \$100,000
- \* Annual adjusted gross income:  $\$50,000.00 \times 30\% = \$15,000.00$
- \* The owner can deduct annually \$15,000.00 until \$100,000 has been reached, or until 6 years elapses, for a total of \$90,000

Property owners may be eligible for other tax savings and should contact a tax lawyer for further information and advice. It is also important to remember that to be eligible to receive federal income tax benefits using the historic preservation resource category, archaeological sites and historic structures must be eligible for or listed on the National Register of Historic Places. Contact the Division of Historical Resources for information on the National Register program.

## *Where to go from here?*

### *Contact an attorney*

If you are interested in having an easement placed on your land you should consult with an attorney. An attorney can advise you of your easement options, your rights and responsibilities, and how to make appropriate decisions regarding the ownership and value of your property.

### *Contact Division of Historical Resources*

Archaeologists and historic preservationists located at the state office can provide you with professional assistance and information on identifying, documenting, and evaluating the significance of an historic building or archaeological site that is located on your property. They can also assist you in determining the National Register status of your site and how to best manage and protect it.

#### **Florida Division of Historical Resources**

R. A. Gray Building  
500 South Bronough Street  
Tallahassee, FL 32399-0250  
(850) 245-6300  
[www.flheritage.com](http://www.flheritage.com)

### *Contact a land-trust organization*

Landtrusts are private, nonprofit conservation organizations that can help you create a conservation easement that meets your needs. They can also direct you to historic preservation organizations, attorneys, and accountants. The following land-trust organizations hold conservation easements to protect historic and archaeological resources within the state of Florida:

#### **Florida Land Trust Network**

1129 Alamanda Lane  
Stuart, Florida 34996  
(772) 219-3457

## **Florida Trust for Historic Preservation**

P.O. Box 11206

Tallahassee, FL 32303

(850) 224-8159

[www.floridatrust.org/index.cfm](http://www.floridatrust.org/index.cfm)

## **Red Hills Conservation Program**

Tall Timbers Research Station

Route 1, Box 678

Tallahassee, FL 32312

(850) 893-4153

[www.talltimbers.org](http://www.talltimbers.org)

Also, contact your local municipal or county government to inquire if they hold conservation easements to protect archaeological sites.



*The Red Hills Conservation Program protects the Bannerman house, near Tallahassee, Florida under an exterior or facade easement.*

## Related Internet Sites

Florida Division of Historical Resources: <http://www.flheritage.com>

Land Trust Alliance: <http://www.lta.org>

Trust for Public Land: <http://www.tpl.org>

Technical Preservation Services for Historic Buildings, NPS:  
<http://www2.cr.nps.gov/tps/tax/easement.htm>

National Trust for Historic Preservation: <http://www.nationaltrust.org>

Florida State Statutes: <http://www.flsenate.gov/statutes/>

## Further reading

### Barrett, Thomas S. and Stefan Nagel

1996 *Model Conservation Easement and Historic Preservation Easement, 1996.* Land Trust Alliance, Washington, D.C.

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1988 *The Conservation Easement Handbook: Managing Land Conservation and Historic Preservation Easement Programs.* Land Trust Exchange and Trust for Public Land, Alexandria, VA.

### Henry, Susan

1993 *Protecting Archaeological Sites on Private Lands.* U.S. Department of the Interior, Washington D.C.

### Hutchinson, Robert and Nina L Mattei

1991 *Land Preservation for Floridians.* The Florida Land Trust Association, Gainesville, FL.

### Land Trust Alliance

1996 *Conservation Options: A Landowner's Guide.* Washington D.C. Land Trust Alliance & National Trust for Historic Preservation

1990 *Appraising Easements: Guidelines for the Valuation of Historic Preservation and Land Conservation Easements.* Land Trust Alliance, Washington, D.C.

### Lind, Brenda

1991 *The Conservation Stewardship Guide: Designing, Monitoring, and Enforcing Easements.* Land Trust Alliance and Trust for New Hampshire Lands, Washington, D.C.

**Small, Stephen J.**

1992 *Preserving Family Lands: A Landowner's Introduction to Tax Issues and Other Considerations.* Landowner Planning Center, Boston, MA.

**U.S. Department of the Interior**

1997 *Historic Preservation Easements: A Historic Preservation Tool with Federal Tax Benefits.* National Park Service, Washington, D.C.



*Archaeological remains of Verdura, a plantation home in Leon County, Florida. A few classically styled pillars are still standing. (Photography courtesy of Florida Memory Project: Florida Photographic Collection.)*

For more information on protecting cultural resources in Florida, like Site Stewardship, Site Watch, public access to sites, and general information about site conservation, visit our web site at [www.flheritage.com/protection](http://www.flheritage.com/protection) or contact the Florida Bureau of Archaeological Research via email at [sitewatch@mail.dos.state.fl.us](mailto:sitewatch@mail.dos.state.fl.us) or by phone at (850) 487-2299.



*Lakeside Inn, located in Mt. Dora, Florida, is one of several historic structures the Florida Trust for Historic Preservation holds under easement.*

Cover photo: *Foshalee Plantation Conservation Easement*  
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Governor of Florida



Glenda E. Hood  
Secretary of State



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