

A Guide To Conservation Easements For AGRICULTURAL LANDOWNERS

Produced by: New Mexico Conservation Easement Education Committee



What is a Conservation Easement?



A **conservation easement** is a voluntary land protection agreement between a landowner “grantor” and a qualified conservation organization “grantee” that puts certain restrictions on the development and use of the landowner’s property in order to protect significant resources such as productive agricultural land, ground and surface water, wildlife habitat, and cultural and historic sites or scenic views. Agricultural conservation easements are specifically designed to keep land available for ranching and farming. A qualified conservation organization can either be a private, nonprofit land conservation organization (such as a land trust) or a public agency. Landowners may choose to donate or sell conservation easements, but due to the limited availability of both public and private funding, the majority of conservation easements in the United States are donated to private land trusts, making the landowners eligible for a variety of federal and state tax benefits described in further detail below. Conservation easements are flexible documents tailored to each property and the needs of individual landowners. They may cover an entire parcel or portions of a property. The landowner works with the prospective grantee to decide which activities should be limited to protect specific resources. When landowners grant a conservation easement to a qualified conservation organization, they are authorizing that grantee to monitor and enforce the restrictions set forth in the agreement.

General Characteristics

In general, agricultural conservation easements limit subdivision, nonagricultural development, and other uses that are inconsistent with commercial agriculture. While easements restrict these uses of the subject property, they do not necessarily have to prohibit them altogether. Some easements allow lots to be reserved for family members or future development. The grantee will typically want to negotiate the location and size of these reserved development lots. Agricultural conservation easements frequently permit commercial development related to the ranch or farm operation as well as the construction of agricultural buildings and improvements. Most conservation easements do not restrict agricultural uses, although some grantees require landowners to implement soil and water conservation plans and practices. Landowners who receive federal funds for farm easements must implement conservation plans developed by the USDA Natural Resources Conservation Service.



Term of the Easements

Most conservation easements are permanent, although there are “term” easements which impose restrictions for a specified number of years. Regardless of the duration of the easement, the agreement is legally binding on future landowners for the agreed-upon time period. A conservation easement can be modified by mutual agreement between the landowner and the easement holder or, in rare cases, terminated by a court of law if the land or the neighborhood changes and the conservation objectives of the easement become impossible to achieve. Like other property interests, easements are not immune from condemnation and can be terminated through eminent domain proceedings.

Retained Rights

After granting an agricultural conservation easement, landowners retain title to their property and can continue to farm and ranch, restrict public access, use the land as collateral for a loan, pass the land on to their heirs, or sell their property. Land subject to an easement remains on the local tax rolls. Landowners continue to be eligible for state and federal farm programs; however, it is wise to check with your agricultural lending institution and verify this is the case in your particular situation.

Valuation

Whether a landowner chooses to donate or sell a conservation easement, it is important to determine the value of the easement, either to establish its sales price or to calculate tax benefits that may be available under federal and state laws. The value of a conservation easement is generally the fair market value of the property minus its restricted value, as determined by a qualified appraiser. In general, more restrictive agreements and greater development potential on the subject property and within the surrounding area result in higher easement values.

Tax Benefits

Landowners who donate permanent conservation easements to qualified conservation organizations or public agencies can receive a variety of tax advantages described in further detail below.

Federal

Donated conservation easements that meet Internal Revenue Code Section 170(h) criteria are treated as charitable gifts. Term easements do not qualify. Under current federal laws, an “ordinary” taxpayer can deduct the value of the conservation easement at an amount equal to up to 50 percent of their adjusted gross income in the year of the gift and for a carry-forward period of 15 additional years or until the value of the donation is used up. Ordinary taxpayers include individuals, trusts, and corporations. Qualifying farmers who earn at least 50 percent of their income in the year of the gift from an agricultural trade or business can take a deduction of up to 100 percent of their adjusted gross income in the year of the gift and for a carry-forward period of 15 additional years or until the value of the donation is used up.

State

In addition to the federal tax deductions, some states — including New Mexico — offer a state income tax credit for landowners who donate conservation easements. In 2008 New Mexico enacted a transferable state tax credit under the Land Conservation Incentives Act. This legislation created a tax credit equivalent to 50 percent of the value of the conservation easement donation, up to \$250,000 per United States taxpayer on the property deed. Eligible taxpayers include individuals, trusts, and corporations. The state tax credits can be used by landowners to offset their state income tax liability for up to 20 years. Because the credit is transferable, landowners who cannot (because they are not New Mexico residents) or do not wish to use the state tax credit to offset their state income taxes can sell part or all of their tax credit on the open market at a discounted rate during the same 20-year time period.

Estate

Even with current exemptions, the donation or sale of a conservation easement can significantly reduce the value of land for estate tax purposes. To the extent that the restricted value is lower than the fair market value, the estate will be subject to a lower tax. In some cases an easement can reduce the value of an estate below the level that is taxable, effectively eliminating any estate tax liability. Recent changes to federal estate tax law, enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001, expanded an estate tax incentive for landowners to grant conservation easements. The law removed geographic limitations for donated conservation easements eligible for estate tax benefits under Section 2031(c) of the tax code. Executors can also elect to exclude 40 percent of the value of land subject to a donated qualified conservation easement from the taxable estate. This exclusion is limited to \$500,000. The full benefit offered by the new law is available for easements that reduce the fair market value of a property by at least 30 percent. Smaller deductions are available for easements that reduce property value by less than 30 percent.

Property

Some state tax codes direct local tax assessors to consider the restrictions imposed by a conservation easement. This provision generally lowers property taxes on restricted parcels if the land is not already enrolled in a differential assessment program. Differential assessment programs direct local tax assessors to assess land at its value for agriculture or forestry, rather than its “highest and best” use, which is generally for residential, commercial, or industrial development.

History



Conservation easements have been in use in the United States for over one hundred years. Forty-eight states have laws pertaining to conservation easements. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act in 1981. The act served as a model for state legislation allowing qualified public agencies and private conservation organizations to accept, acquire, and hold less than fee simple interests in land for the purposes of conservation and preservation. Since the Uniform Conservation Easement Act was approved, 21 states and the District of Columbia have adopted conservation easement enabling legislation based on this model; and 27 states have drafted and enacted their own enabling legislation.

Conservation Easements and Land Trusts

Conservation easements are a type of voluntary, private land protection agreement, between a landowner and a qualified conservation organization, most commonly a private land trust. A land trust is a private, nonprofit conservation organization that uses conservation easements and other voluntary land protection methods to protect and preserve land for agriculture; wildlife habitat; scenic open space; and cultural, historic, recreational, and educational purposes. Some land trusts protect land for all these purposes while others may focus on a single intent. Land trusts are governed by a board of directors that is typically comprised of members of the local community, region, or state in which the organization operates. Land trusts exist in all 50 states and, to date, they have collectively conserved over 12 million acres of private land nationwide through the use of conservation easements. In addition to several national land conservation organizations, there are six local land trusts operating in New Mexico, which are listed below.

Benefits

Benefits

- Conservation easements permanently protect important agricultural land while keeping the land in private ownership and on local tax rolls.
- Conservation easements are flexible and can be tailored to meet the needs of individual farmers and ranchers and unique properties.
- Conservation easements can provide farmers with several tax benefits including income, estate, and property tax reductions. By reducing non agricultural development land values, conservation easements may help farmers and ranchers transfer their land and operations to the next generation.

Precautions

- While conservation easements can prevent development of agricultural land, they do not ensure the land will continue to be used for agricultural purposes. Since conservation easements cannot require landowners to engage in specific economic activities, how the lands are used in the future will depend on the future owners.
- Agricultural conservation easements must be carefully drafted to ensure the terms allow farmers and ranchers to adapt and expand their agricultural operations and practices to adjust to changing economic conditions.
- While federal and state incentives have been greatly expanded in recent years, donating an easement is not necessarily a financially viable option for every landowner.
- Monitoring and enforcing conservation easements require a serious commitment on the part of the easement holder. When choosing an organization to work with, landowners should carefully choose a land trust or agency that has the capacity and long-term viability to adequately monitor and legally defend the easement.
- Although condemnation cases are rare, conservation easements do not offer full protection from eminent domain. However, if land subject to an easement is taken through eminent domain, both the landowner and the easement holder must be proportionally compensated.

The Next Step

If what you have read interests you then talk to your family, your financial advisor, and to your agricultural organization, then talk to one of the experts listed on the next page.



Additional Land Conservation Resources

The following organizations can provide more information about conservation easements, the process, the costs, and the associated tax benefits:

New Mexico Land Trusts

New Mexico Land Conservancy Scott Wilber, Executive Director

P.O. Box 6759
Santa Fe, NM 87502-6759
Tel: (505) 986-3801
Fax: (505) 986-3806
info@nmlandconservancy.org
www.nmlandconservancy.org

Rio Grande Agricultural Land Trust

Cecilia McCord, Executive Director

P.O. Box 40043
Albuquerque, NM 87196-0043
Tel: (505) 270-4421
ceciliam@rgalt.org
www.rgalt.org

Santa Fe Conservation Trust

Rici Peterson, Executive Director

P.O. Box 23985
Santa Fe, NM 87502
Tel: (505) 989-7019
Fax: (505) 988-1455
info@sfct.org
www.sfct.org

Southern Rockies Agricultural Land Trust

Cheryl Goodloe, Executive Director

P.O. Box 598
Capitan, NM 88316
Tel/Fax: (575) 354-2379
sralt@hotmail.com

Taos Land Trust

Ernie Atencio, Executive Director

P.O. Box 376
Taos, NM 87571
Tel: (575) 751-3138
Fax: (575) 751-1189
info@taoslandtrust.org
www.taoslandtrust.org

The Forest Trust

Henry H. Carey, Executive Director

P.O. Box 8309
Santa Fe, NM 87504-8309
Tel: (505) 983-4244
Fax: (505) 986-0798
henry@forestreserve.com

Other Resources:

Natural Resource Conservation Service

Seth Fiedler, Resource Conservationist

6200 Jefferson, NE
Albuquerque, NM 87109
Tel: (505) 761-4416
Seth.fiedler@nm.usda.gov

American Farmland Trust

www.farmland.org

Land Trust Alliance

www.lta.org

Partnership of Rangeland Trusts

www.maintaintherange.com

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