

NEW MEXICO LAND CONSERVANCY
“Conserving New Mexico’s Land Heritage”

FREQUENTLY ASKED QUESTIONS ABOUT
LAND TRUSTS AND CONSERVATION EASEMENTS

What is a land trust?

A land trust is a private, non-profit organization that uses conservation easements and other voluntary land conservation techniques to protect and preserve land. In most cases, the members of the board of directors of a land trust are typically members of the community, region or state in which the land trust operates.

What is a conservation easement?

A conservation easement is a legal agreement that contains permanent restrictions on the development or use of a piece of land for the purpose of protecting the agricultural, scenic, open space, wildlife habitat, recreational or historic values on that land.

What form does a conservation easement take?

A conservation easement is a legal contract between a landowner, who is generally referred to as the “grantor,” and a land trust, which is generally referred to as the “grantee.” Government entities may also hold conservation easements. While all conservation easements contain some standard legal language, each easement is tailored to the specific conservation goals of the landowner. In many cases, the land trust may have a model easement with standard boilerplate language that it will use as a template for drafting a final easement for a given property. The final conservation easement is signed by both parties and recorded in the county real estate records, just like a deed.

What is the role of a land trust?

The terms of the conservation easement are negotiated between the land trust and the landowner. Once the conservation easement has been granted to the land trust, the land trust has the responsibility for periodically inspecting the property to verify that it is in compliance with the terms of the conservation easement. The land trust is responsible for enforcing the development restrictions and other restrictions defined in the conservation easement.

Why would a landowner want to consider a conservation easement?

A landowner enters into a conservation easement as a voluntary act to preserve land. Preserving a piece of land is as much a private property right as developing it. A landowner may use a conservation easement to keep a piece of land in its current condition. Conservation easements may allow additional limited development – for

example, a landowner may want to provide homesites for his children or reserve a limited number of homesites as a source of future income. There are also a number of federal, state and estate tax benefits associated with the donation of a conservation easement which are discussed further below.

What should a landowner consider when setting up a conservation easement?

All conservation easements must be written and structured to comply with a number of requirements, particularly regulations set by the IRS. It is important for a landowner considering a conservation easement to consult with a land trust as well as their legal and tax advisors.

Can any property be placed under a conservation easement?

Any property may be placed under an easement that restricts use or development of the land, or that provides some form of access to the property. However, in order to be classified as a “conservation easement”, and to be eligible for any applicable federal and state tax benefits (further described below), an easement must be granted for one or more specific “conservation purposes”. In order to qualify under the Internal Revenue Service (IRS) regulations (Code), a conservation easement must meet the public benefit test by fulfilling at least one of the following “conservation purposes”: protection of wildlife habitat, protection of scenic viewsheds and open space (including working farm, ranch or forest lands), protection of educational or recreational values, and/or fulfillment of a clearly defined government open space policy.

Does a conservation easement prohibit all uses and development of the property?

No. Conservation easements often permit farming, livestock production and timber harvesting, although they typically do not permit other forms of commercial or industrial uses. Furthermore, conservation easements do not necessarily prohibit additional agricultural and residential development. A landowner may reserve limited development rights for future agricultural structures/improvements, personal homesites or development lots for sale. The number of development rights which could be reserved by the landowner will depend on various factors particular to each easement, including the size of the property, the conservation values to be protected and the proposed location of the reserved development rights in relation to the conservation values. While the IRS regulations do not create a precise measure of the number of development rights which can be reserved, sufficient conservation values must be protected and there are other requirements with which the easement may have to comply in order to qualify for a charitable deduction under the regulations.

Is public access required?

Public access is generally not required when a conservation easement is granted to a private land trust. However, if one of the purposes of the conservation easement is to permit public (recreational) use, the land trust or government entity acquiring the

easement may require public access. In these cases, the specific locations and levels of public access and use are negotiated with the landowner. For example, the landowner and land trust may agree that public access for certain kinds and levels of recreational use are to be permitted along a specifically defined trail route, but nowhere else on the property.

Can a conservation easement be completed after the death of a landowner?

Yes. The Internal Revenue Code provides that for certain properties which qualify, the estate may donate a conservation easement after the death of a landowner and obtain an estate tax deduction for the value of the easement. However, it is much better planning for a landowner who wishes the property to be encumbered by a conservation easement after their death, to provide for this in their will.

How is a conservation easement valued?

An independent appraiser establishes the value of a conservation easement by using what is known as the “before and after approach” by which the appraiser determines the value of the property before the conservation easement is placed on the property and the value of the property after the property is encumbered by the conservation easement. The difference between the “before” and “after” values is the value of the easement.

For example, the fair market value of a 1,000 acre ranch or farm in a rapidly developing area might be \$2,000/acre. Some of that value reflects the value of the development rights (in other words, the potential to subdivide the property for residential or commercial development). After a conservation easement is placed on the property allowing only two additional homesites to be built on the 1,000 acres, the property may be worth only \$1,250/acre for its use as a ranch and for the potential to develop two additional homes. The value of the conservation easement is the difference between the \$2 million property value before the conservation easement and the \$1.25 million after the conservation easement. In this case, the conservation easement would be worth \$750,000.

What are the tax benefits of a conservation easement?

If the conservation easement meets the public benefit test described above (by fulfilling one or more of the conservation purposes recognized by the IRS), the donation or sale at less than fair market value of a conservation easement to a qualified conservation organization (either a land trust or a governmental entity) may be treated as a charitable contribution of the development rights associated with the underlying property. The donation of part or all of the conservation easement’s value may qualify the landowner for a tax deduction on his federal income tax return. In New Mexico, the donation of a conservation easement may also qualify the landowner for a tax credit against his or her New Mexico state income tax liability. The current amount of the state tax credit is 50% of the value of the conservation easement donation up to a maximum of \$250,000 per taxpayer on the property deed. In addition, a conservation easement can lower the

property value for estate tax purposes and may qualify the encumbered land for an additional partial exclusion from estate tax. In the case of purchased conservation easements, the proceeds from the sale of a conservation easement are treated as taxable sale of real estate. However, if the landowner sells a conservation easement for less than its appraised fair market value (bargain sale), the difference may be treated as a charitable contribution.

What are the income tax benefits of a conservation easement?

Using the example above, if the conservation easement was entirely donated, the \$750,000 value of the conservation easement will be a charitable deduction that can be used to offset the landowner's federal income taxes. This type of charitable deduction may be used to offset only 30% of the landowner's adjusted gross income in the year the gift is made. However, the deduction can be used as needed over the following five years, offsetting up to 30% of adjusted gross income each year. The charitable deduction may be used to offset either ordinary income or capital gains.

In New Mexico, a landowner who is a New Mexico state taxpayer may also be eligible for a state tax credit equal to half the appraised value of an easement donation up to a maximum of \$250,000 per taxpayer on the property deed. Any portion of the tax credit which is not used in the year of the gift may be carried forward and used to offset a landowner's New Mexico state income taxes for up to 20 consecutive years until it is fully expended. Alternatively, the tax credit can be transferred or sold at a discounted rate to a buyer who can then use the tax credit to offset his or her state tax liability.

What are the estate tax benefits of a conservation easement?

Despite recent changes in the estate tax rates and allowable exemptions, estate tax rates remain the highest rates faced by the American taxpayer. Using the example above, the easement encumbered property will be valued at \$1.25 million for estate tax purposes rather than \$2 million. In this example, the reduction in the value of the property by \$750,000 resulting from the placement of the conservation easement could save the heirs a considerable amount of estate tax that they would otherwise have had to pay after the death of the landowner, based on the value of the unencumbered property and depending on the size of the estate. Most importantly, this could mean the difference between the heirs having to sell the property to pay the estate taxes or keeping the property in the family.

In addition, if the easement qualifies under certain provisions of the IRS Code, then 40% of the value of the property remaining after the granting of an easement can be excluded from the value of the estate, up to a maximum exclusion of \$500,000. In our example, the remaining value of the property after the granting of an easement is \$1.25 million and forty percent of that is \$500,000. If this easement qualifies, then an additional exclusion from the estate of \$500,000 could be available.

Are conservation easements the only method available to reduce inheritance taxes?

No. A special valuation is another important tool available to persons inheriting land used in a family farming or ranching business. To qualify for a special use valuation, generally the farming or ranching property must make up at least 50% of the value of the estate and certain heirs must agree to continue the agricultural activity for 10 years, or pay an additional tax. If the estate qualifies for a special use valuation, the land will be valued at its agricultural value, not its fair market value. The reduction in value is limited to \$750,000. It is possible to donate a conservation easement without violating restrictions in the special use valuation rules against a sale or other disposition of the property for a 10 year period.

How can a conservation easement benefit public entities?

Several possible benefits can accrue to a public entity through the use of a conservation easement. A donation of a conservation easement for the tax benefits available to the donor can also advance a public entity's open space goals, such as the protection of wildlife habitat or scenic views. Where a landowner is not interested in making a donation of a conservation easement, the purchase of an easement can advance public open space goals at a lesser cost than by a purchase of fee title, while keeping the property on the tax rolls and not requiring ongoing public maintenance. In conjunction with development proposals, while a required conservation easement will not qualify as a donation, the protection of the open space portion of a project will advance open space goals and can mitigate the impact of such development, while providing comfort to a community about the long-term protection of the open space.

For further information, contact:

New Mexico Land Conservancy
P.O. Box 6759, Santa Fe, NM 87502
233 Johnson St
Santa Fe, NM 87504
(505) 986-3801 (phone)
(505) 986-3806 (fax)
www.nmlandconservancy.org