

Land Conservation Tools

Conservation Easements and Other Flexible Approaches to Accomplish Your Goals on Your Land

I'm going to talk mostly about conservation easements today, as one tool you can use to accomplish your goals on your land. We would never try to talk anyone into a conservation easement if they weren't interested, but it's a good and important approach landowners should at least know something about.

Most people I know involved in this work don't do it because we enjoy figuring out IRS regulations and negotiating complicated real estate deals, but we do it for the land. So don't ask me any hard math or technical questions. We do it because it's a good tool people can use to protect the land, keep it intact and keep their families on it.

What is a conservation easement? A conservation easement is a voluntary legal agreement between a landowner and a qualified easement holder, like a land trust, that permanently protects certain conservation values of the land by limiting future development. Tax incentives exist because the government recognizes the value to the general public of preserving agricultural land, scenic open space, wildlife habitat or historic sites. Under a conservation easement the landowner retains ownership

and can continue to use the land for ranching or farming or other activities that are consistent with the conservation values, can exempt certain portions of their land, can apply different restrictions to different areas, can reserve limited home sites for kids or grandkids, can sell it or pass it on to heirs as they wish (see Appendix A).

So, conservation easements allow landowners to decide how their land will be cared for in the future no matter who owns it and the protections the landowner apply stay with that land forever. It's a very flexible tool that can be tailored to the needs of the landowner or family. I'll give a few examples later.

What is *not* a conservation easement? A conservation easement, particularly for agricultural land, does not generally require public access. A conservation easement does not mean that someone else can tell you how to manage your land on a day to day basis. The only rules about managing your land are those that you agree to in the conservation easement. A conservation easement does not restrict your ability to sell or hand on to heirs or convey the land to someone else (but the conservation easement stays with it).

Ernie Atencio

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Once a landowner decides to go ahead with a conservation easement, it requires a good appraisal to determine the "before and after" values: The fair market value of the land with development potential is the "before" value; the land under easement with development rights removed is the "after" value; the difference between the two is the value of your development rights, or the conservation easement.

In a conservation easement a landowner voluntarily surrenders certain development rights, and the more you give up, the greater the value of the conservation easement. But you can't say you're only going to build a house on every two acres instead of every acre and claim that there is any real conservation value left in that fragmented situation. So it's got to make sense. It's got to protect a real conservation value or it won't fly with the IRS. But you can place a conservation easement on parcels as small as an acre.

Land trusts can draft the conservation easement and help landowners get through all the legal and regulatory hoops along the way. We don't offer legal or tax advice, but we can help find people who can; we can help you find attorneys and appraisers; depending on the nature of your easement, you might also need biological reports, historical and archaeological reports, geology reports. And when it's all said and done, if you donate your easement--

that is, you are donating the development rights that you've decided to give up--to a land trust, then that land trust is responsible for making sure all the conservation values are protected and the conditions of the easement are honored in perpetuity. Forever.

Donated easements can also qualify the landowner for federal and state tax benefits, if you donate to a nonprofit land trust. Under the IRS, you can deduct the appraised value of a conservation easement up to 30% of your Adjusted Gross Income for up to 6 years. Under a new state law--the New Mexico Land Conservation Incentives Act--you can get a credit against your state taxes of 50% of the appraised value of a conservation easement up to \$100,000 and spread it out up to 20 years (Edward Archuleta will talk about the Land Conservation Incentives Act this afternoon).

Other tax benefits, as Rick discussed, are that a conservation easement will lower the taxable value of your land estate and reduce inheritance taxes. Donating that easement might also qualify your heirs for an additional 40% reduction in inheritance taxes. Heirs can get the same benefits by donating a postmortem conservation easement within 15 months of the landowner's death.

All the 29 conservation easements Taos Land Trust holds have been donated, but development rights can also be

purchased. Of course, that will not allow the landowner to take tax deductions or credits, but it is a way to get some income up front. David Manzanares of the Natural Resources Conservation Service will talk about a cost share program through the USDA to purchase development rights on productive agricultural lands.

Conservation easements are not for everyone, and it's important for landowners to understand that through a conservation easement they are voluntarily giving up value in their property, for public benefit, in perpetuity. Need to be very clear about what you want to accomplish, think through the process thoroughly, and be careful about the specific language used in a conservation easement.

Here are a few examples: One conservation easement in Arroyo Hondo includes common land surrounded by seven different landowners in individual private homes. Each owns a portion of the easement that they can use for agricultural activities or just maintain as open space. One in Los Córdovas includes 20 acres in agriculture with another five acres reserved for buildings and development related to agricultural activities. Another conservation easement in San Cristóbal protects the fertile irrigated pastureland but left out the piñon and juniper mesa top for possible home sites. An easement in Des Montes allows

clustered buildings for a commercial stable while leaving the rest open irrigated alfalfa.

And it doesn't have to be a conservation easement to accomplish the same goals. The Cejas de Colonias subdivision just off Blueberry Hill does not have a conservation easement, but reserved 150 acres of open land surrounded by 24 one-acre home sites.

In conclusion, I know there are some concerns and doubts about CEs, but I think landowners ought to weigh those concerns against the what it is they are trying to accomplish on their land or what they are trying to protect.

I'd like to finish with something I got from the California Rangeland Trust--a land trust in CA that works exclusively with ranchers: "Ten Reasons to Place a Conservation Easement" by a rancher named Jack Varian.

"Our Goal at the v6 Ranch is:

1. To keep this land economically productive and open and to manage this land for the good of all. To cultivate natural beauty by slowing down water and using the teachings of Holistic Management to achieve this goal.

2. Pay off ranch debt.

3. Protect family unity by removing the ability to divide the ranch.

4. Program is voluntary.

5. Integrity of Easement is maintained because the California Rangeland Trust is the holder of the easement and

does the monitoring.

6. Reduction of ranch value for inheritance tax valuation.

7. Gives permanent home to all the other critters who live on the ranch (i.e., deer, birds, rabbits, coyote, etc.).

8. It's time to pay back to the land for the good life it has given my family.

9. Private property rights are maintained just as they were before the easement.

10. What legacy is our legacy to the future generations? Do we leave some land open or are we so greedy that we pave it all over?"

