

# The Wisdom of Estate Planning and Conservation Easements

## Benefits for the Land. Your Family. Your Community and Your Pocketbook

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The first thing I should probably talk about is what is an easement. For those of you who don't know what an easement is, you probably actually have one on your property or a bunch of them on your property. An easement can be granted from you to the utility company so they can run utility lines. It's written down on your warranty deed, and if you did a survey, it's going to be written down on your survey: "Easement granted to. . . ."

Now for a utility company or for road access, for entrance and egress to or from your property, even though that's on your warranty deed, it's not really going to affect the value of your estate or the value of your property. But if you get into a conservation easement, that will reduce the taxable value of your property. Now that may or may not sound like a good thing, but it is going to reduce the value of the property for tax calculation purposes. How does that work?

A conservation easement is going to be a written document between you and, hopefully, Taos Land Trust. The document will say that you have voluntarily extinguished certain development rights and that Taos

Land Trust has authority to make sure anyone who ever owns that property in the future complies with your wishes that the land remain undeveloped. Taos Land Trust takes on that responsibility, but you still own the land and can continue farming or ranching or even sustainable forestry. And you can sell it or pass it on to your children. Taos Land Trust is just there to make sure the land is protected no matter who's name is on the warranty deed.

So the easement is a legal agreement between the landowner and a qualified easement holder, like Taos Land Trust. It will permanently protect that portion of the land. Basically, what you're giving up is your ability to subdivide or develop that land, but not your right to build a house where you want or maybe hold out a couple of house sites for your kids. So you have those beautiful 50 acres in Arroyo Seco, and you're not going to see condominiums going up on your alfalfa fields or in front of your view.

So you give up your development rights, which you probably didn't want to use anyway, to keep your land just like it is. Again, it is going to reduce the

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value of your land for tax purposes, but in order to get the tax benefits you have to meet particular IRS requirements. I'm just going to read them for you:

The conservation easement, obviously, must be for conservation purposes. The first conservation category is outdoor recreation, for substantial and regular use of the public. That means granting access to the public so they can use the land to go hiking, ride their horse on it, and so on. It's important to note that the other conservation categories do not require regular public access, but this one obviously does.

Or the easement can be for the protection of the natural habitat of fish, wildlife or plants. The details of this are something that you and Taos Land Trust would have to work out, but under this category you don't have to provide any public access.

The third category is the preservation of open space, including farmland and forestland, where such preservation is for the scenic enjoyment of the general public, or is pursuant to a clearly delineated governmental conservation policy and would offer a significant public benefit. Let's say you had 20 acres up in Deer Mesa and your house was situated on that property. You think, "Gee, I'd like to put 15 acres into a conservation easement." Well, let's see. Can the general public see it from a public road? Yes, people can see it from Valdez or

the Rim Road. So if I'm giving up my right to develop it and put condos on it, and the public is going to benefit by being able to see that beautiful forest, that will probably meet the IRS requirements. That qualifies as scenic enjoyment for the general public, even if no one is allowed on your property.

The fourth category is preservation of historically important land or a certified historic structure. For example, El Torreon on Paseo del Pueblo Norte: If you owned that property and chose to preserve the historic building rather than bulldoze it for commercial space, that qualifies as a conservation easement.

Now, what is a conservation easement going to do for you? Well, you're going to get an income tax deduction. For those of us who have income that we need deductions for, it's great. A lot of us don't have enough income to need income tax deductions. So much of this won't play out until it comes time to pay estate taxes.

You've heard a lot of what's going on in Congress, and right now, estate taxes are going to be thrown out in 2011. That's not to say that Congress can't bring them back. But right now, you can pass on to your heirs up to \$1.5 million worth of goodies without having to pay estate tax. Those goodies in this case are your land. You'd be surprised at how quickly that value adds up. If you've been living on a 50-acre parcel of

land for the last 50 years, you may not think it's worth much money. But when you actually sit down and get an appraiser to come out and she says, "Well, you know what? We can sell these acres for this amount of money," all of a sudden you are a very wealthy person, according to the IRS. You may not be able to go out and buy your friends dinner at the El Monte Sagrado, but your heirs certainly are going to end up having to pay some estate tax subsequent to your death. As Ernie was saying before, the last thing you want to have happen when your kids inherit this beautiful piece of property is for them to end up with a big estate tax bill. They don't have the cash, and guess what? They have to sell the land.

Who buys it? Maybe someone who is going to develop it. Now this beautiful piece of property that your children grew up on, that the grandchildren came and played on--now it's condos. Maybe you want condos. I don't know. But the point is, there is an option if you don't want that to happen to your land.

Let's say the appraised value of your land is \$4 million--and I promise you, that can happen very quickly, especially with real estate prices the way they have been escalating here. I picked \$4 million because it was an easy number for me to work with. If you take the value of your conservation easement, say \$1 million,

that value comes off the land value in your gross estate. So now, you've got a gross estate of \$3 million. If you have that conservation easement on there, the IRS gives you a bonus, and you get to deduct another 40 percent. So now, if you subtract that 40 percent out, you end up with a value of your land at \$1.8 million. Right now you can exempt that additional \$1.5 million I mentioned. So you've just reduced your taxable estate from \$4 million to \$300,000. That still requires your kids to pay some estate tax, but not nearly as much (see Appendix F).

Just by placing a conservation easement on your property, in this scenario your children may only have to pay \$150,000 in estate tax. With additional advance planning, you could get that down to zero. Without a conservation easement and proper estate planning, the estate tax could be as much as \$1.25 million. I'm not going to go into exactly what estate planning involves, but let's just suffice it to say that if you have proper estate planning, you're going to pay a lot less tax. If you don't have proper estate planning, your kids may end up having to sell the farm.

So if you have a land estate worth \$4 million and you have not given away an easement, there's no reduction for the easement and there's no less the 40 percent, so your land estate is appraised at \$4 million. If you're married without proper

estate planning and the first spouse were to die, the other spouse inherits all of that land and there's no estate tax due upon the death of the first spouse. But when the surviving spouse dies, they die owning \$4 million worth of land as part of their estate. That means their children are going to have to pay estate tax on \$4 million, minus \$1.5 million (because you can exempt \$1.5 million of any estate) and what does that leave you? That leaves a \$2.5 million estate, and half of that is going to be how much your children would have to pay estate tax on. So we're talking over a million dollars that your children are going to have to come up with, in cash, to pay the IRS. Chances are they're not going to be able to come up with that kind of cash, so they're going to have to sell the land.

To summarize: If you have an estate worth \$4 million, you're married, you have done proper estate planning and you do a conservation easement, on

your death your children could actually pay no estate taxes. Without a conservation easement or estate planning, the estate tax could be \$1.25 million. So if you look at these numbers, they range from \$1.25 million to zero. That's a huge difference. Obviously, these numbers are not going to play out for everybody. I've used these numbers, and they're very dramatic. But if you have land, if you have considerable acreage and you have no estate planning and no conservation easement, when second spouse dies, your children are likely going to have to sell their land--your land--in order to pay the estate tax.

The bottom line is, you could pay zero estate tax to a lot of estate tax. It really depends on your own situation. You may have an estate, you just don't know it; a lot of people are very surprised to find out that their estates really are worth more than they think. It's wise to at least consider it.

