

Article from the Nature Conservancy website at <http://www.nature.org/about-us/private-lands-conservation/conservation-easements/all-about-conservation-easements.xml>

There is no one-size-fits-all conservation easement.

RIGHTS

Land ownership carries with it a bundle of rights—the right to occupy, lease, sell, develop, construct buildings, farm, restrict access or harvest timber, among others. A landowner can give up one or more of those rights for a purpose such as conservation while retaining ownership of the remainder of the rights. In ceding a right, the landowner "eases" it to another entity, such as a land trust. For example, a landowner may give up the right to build additional structures while retaining the right to grow crops. The rights conveyed in a conservation easement, such as the right to subdivide, have been established over two decades of case law as having real value.

PRIVATE LAND

Private property subject to a conservation easement remains in private ownership. Many types of private land use, such as farming, ranching and timber harvesting, can continue under the terms of a conservation easement, and owners can continue to live on the property. The agreement may require the landowner to take certain actions to protect land and water resources, such as fencing a stream to keep livestock out or harvesting trees in certain way; or to refrain from certain actions, such as developing or subdividing the land. Conservation easements do not mean properties are automatically opened up to public access unless so specified in an easement.

FLEXIBILITY

There is no one-size-fits-all conservation easement. Each one is individually tailored to meet conservation objectives and the needs of the landowner. A conservation easement can be designed to accomplish specific objectives, such as to protect water quality or the habitat of grizzly bears; or it can be designed more broadly, to protect farmland, open space, views or land that buffers more sensitive core conservation areas, all of which can offer significant biodiversity conservation benefits. Easements are also tailored to meet a landowner's needs, such as the need to build a house in the future for a daughter's family or the need to continue to derive income from the land through ranching.

IN PERPETUITY

Most easements "run with the land," remaining with the property even if it is sold or passed on to heirs, thus binding in perpetuity the original owner and all subsequent owners to the easement's restrictions. The organization or agency that holds the conservation easement is responsible for making sure the easement's terms are

followed into the future. They must be willing to monitor and defend the easement legally in the event it is ever violated.

Often landowners have no intention of subdividing their properties for development. But a conservation easement is still attractive to them because it reaches beyond their own lifetimes to ensure the conservation purposes are met forever. An easement binds heirs and other future landowners to comply with the easement's terms, such as prohibiting the building of roads or multiple housing units. It can give peace-of-mind to current landowners worried about the future of a beloved property, whether forest or ranch, stretch of river or family farm.

DONATED VS. PURCHASED EASEMENTS

Usually conservation easements are donated, although some are sold to a private organization or public agency. An easement might be bought from a landowner strapped for cash, such as one who is trying to keep the family ranch together but who is faced with rising property taxes. Either way, there can be significant tax savings for the landowner. In either situation, the conservation organization or public agency retains the right to enforce the easement promises.

Most of the Conservancy's easements transactions have been donated easements. The Conservancy will generally purchase easements only in high-priority sites where circumstances are such that a landowner cannot use the tax benefits of a donated easement and where funds can be identified and secured for the purchase. Purchasing easements costs less than purchasing the land itself.

Increasingly, states and communities are buying conservation easements by turning to purchase-of-development rights (PDRs) programs as a way of keeping farms and ranches intact and sprawl off the land. In a PDR program, public funds are used to purchase the land's development rights, in effect creating a conservation easement on the land while the land remains in private ownership. PDRs are voluntary and share widespread support, with many more applicants than available funds. The most common financing mechanisms at the state level for PDR programs have been annual appropriations, dedicated lottery revenues, and bonds authorized by the legislature or a voter referendum.¹ From Chesapeake, Virginia, to Routt County, Colorado, and beyond, the Conservancy has helped create several PDR programs.

TAX CONSEQUENCES

When a landowner conveys a gift of a conservation easement to a non-profit or public agency qualified to hold such interests, the transfer may entitle the landowner to a number of tax benefits. The landowner may qualify for a federal charitable income tax deduction under IRC section 170(h) if he or she donates or "bargain sells" the conservation easement, which requires that the easement 1) comply with state law requirements for easements in land; 2) be conveyed to a qualifying organization to hold the easement; and 3) be conveyed "exclusively for conservation purposes" and in perpetuity.

Assuming that those requirements are met, the amount of the charitable contribution for a gift of bargain sale by the landowner is based on the appraised fair market value of the easement. This is determined by calculating the difference between the value of the property today without (or "before") the imposition of the easement and the value of the property today subject to (or "after") the imposition of the easement. This latter value is determined by the nature of the restrictions and their impact on present and future land use. The resulting amount is the value of the easement for tax purposes. Generally, a property's value is based on its "highest and best use," which often means development. Conservation easements in which development rights are given up can often qualify the property for a substantial value for tax deduction purposes, as the parcel's development potential no longer exists. Under IRS rules, the donor of the easement is responsible for obtaining an independent appraisal to substantiate the value of the easement for tax purposes, and the IRS has published rules as to what constitutes a "qualified appraisal" and a "qualified appraiser" for such purposes.

The tax benefits for a landowner in making a gift of an easement are much the same as any other charitable contribution. Assuming that the easement is valued at \$10,000, a landowner in a 30 percent marginal income tax bracket would realize \$3,000 in tax savings from the gift, if the landowner has enough income from other sources to be able to use the full amount of the gift value. The law allows a five-year carryover period beyond the year of the gift for landowners to claim the unused gift value.

In addition to the income tax deduction, under IRC 2031(c), the gift of the easement can also entitle a landowner to qualify for an estate tax exclusion for a portion of the value of the underlying land that is subject to a conservation easement, thereby reducing the estate tax on the value of the landowner's assets that pass to the heirs.

In 12 states across the country, landowners who make gifts of conservation easements or who sell conservation easements are eligible for state-level tax benefits. In some states, easement donations qualify for dollar-for-dollar credit against the landowner's state income tax liability for a portion of the value of the conservation easement. In other states, if an easement is sold, the income realized by a landowner on the sale of the conservation easement will be exempt from state income tax. Generally, the easements that qualify for such benefits must conform to the federal tax law rules for qualifying conservation easements.

In many states, there are local real property tax benefits for landowners who convey conservation easements on their lands. Because property is generally assessed at its fair market value based on its highest economic use and because the easement removes some of the most valuable development rights so that the property's highest and best use is severely limited, local assessors may reduce the assessed value of the property for property tax purposes, thereby lowering the property tax bill on lands encumbered by easements.

EASEMENT TERMS

The terms of a conservation easement are set jointly by the landowner and the entity that will hold the easement. They are designed to meet the needs of both parties by targeting only those rights (e.g., commercial development) necessary to accomplish specific conservation objectives.

Before setting the terms of an easement, the Conservancy conducts a scientific assessment of the land and its natural resources to determine the conservation objectives for the land in the context of the larger landscape and prepares a baseline report documenting the condition of the land. The Conservancy also often considers community values, opinions and land uses in setting the terms of an easement. Easement terms also should include a plan for monitoring the property to ensure that the conservation goals will be met in future and the easement terms will be enforced.

MONITORING AND ENFORCING EASEMENTS

To accept a conservation easement encumbers the easement holder with a large responsibility. The private organizations and public agencies who hold conservation easements in trust must commit staff and resources to monitor the land and ensure easement terms are followed now and into the future. They also must be prepared to legally defend an easement in the event it is ever violated.

Conservancy policy requires all easements accepted and held by the Conservancy include a baseline report that documents the condition of the property at the time of the signing of the conservation easement. Any future changes in the condition of the property can be measured against the information in this report. Conservancy policy requires funds be set aside for the perpetual monitoring of the easement. Conservancy policy also requires funds be raised or borrowed from the Conservancy's Land Preservation Fund in an amount sufficient to cover stewardship "start-up" costs and to fund a stewardship endowment that will generate income to cover at least half of the projected annual stewardship needs for the Conservancy's management responsibilities for the foreseeable future. If the appropriate amount of funding is difficult to determine, an acceptable estimate is 20 percent of the land interest's fair market value.

On rare occasions, landowners have sought to amend the terms of a conservation easement. In the vast majority of cases, amendments requested to Conservancy-held easements are either to strengthen existing conservation restrictions or to add additional acreage to the easement. In the relatively few instances where a landowner seeks to change the terms of an easement, in accordance with Conservancy policies and procedures, the Conservancy works to make certain that any changes result in a conservation gain, or at least a neutral impact on conservation targets. Amendments to Conservancy easements are rare and managed carefully to ensure conservation goals are met and that there is no private financial benefit to the landowner.

LANDOWNERS WITH WHOM THE CONSERVANCY NEGOTIATES EASEMENTS

The Conservancy today only will accept donations of conservation easements or purchase an easement on lands where significant conservation benefits are

obtained. (In recent years, these increasingly are areas that have been identified as "portfolio sites" through ecoregional planning, a scientific process conducted by Conservancy scientists and outside experts.) The Conservancy has often turned down offers of donations of conservation easements on lands that do not fulfill the Conservancy's mission, even though the lands may have important ecological values.

The Conservancy has completed easement transactions with farmers, ranchers, large timberland owners and other private landowners, as well as with businesses and other land-holding entities.

WHY LANDOWNERS USE CONSERVATION EASEMENTS

Landowners donate or sell conservation easements primarily because they want to protect their lands and waters from inappropriate development beyond their lifetimes. Land subject to a conservation easement might also qualify for income, estate and property tax savings. Landowners often can more easily afford to pass on land to their children and grandchildren, because by removing the land's development potential, an easement may lower the property's market value, which in turn can lower estate taxes. Such a tax reduction can make a critical difference in the ability of heirs to keep the land intact; the alternative has often been subdividing the land to pay heavy estate taxes.

The option to place conservation easements on private land is an important private property right that comes with land ownership in the United States. It is a voluntary tool that landowners have at their disposal—one that can help them fulfill their vision for the future of their land.

PUBLIC BENEFITS OF CONSERVATION EASEMENTS

Even though easements are placed on private land, significant public benefits can accrue. Conservation easements can contribute to improved water quality and are often designed to protect aquifers and watersheds. They can protect a community's scenic beauty, vistas and open space by keeping landscapes free of sprawl. They can help keep landscapes in traditional uses, such as farming and ranching, and can keep small family farmers and ranchers on the land in tough economic times. They are used to buffer national parks and other public lands, keeping development away from boundaries, preserving scenic entrances and giving wildlife habitat an "overflow" outlet onto private land. Increasingly, as development approaches sensitive military installations, easements are also being used to buffer military bases around the country. Recently, easements for the first time have been used on a Native American Indian reservation to help prevent fragmentation of tribal lands by non-Indians on private in holdings.

Another significant but often overlooked public benefit is that privately owned lands that have been protected through conservation easements limiting their uses to farming, ranching, forestry and other open-space uses often generate more in local revenues than they require in community services. As shown in several studies conducted nationwide, undeveloped lands cost communities much less in public services than do developed lands.²

EASEMENTS AS A COST-EFFECTIVE CONSERVATION TOOL

Conservation easements are an important, cost-effective tool for The Nature Conservancy and other conservation interests. Easements extend limited conservation dollars by helping protect ecologically important private lands, reserving other funds for targeted outright purchase. In some areas of the United States and other countries, the capital and management costs and the economic and social impacts of large-scale land acquisition limit outright conservation purchases. Easements provide a strong conservation option in such locations. In many places, they have been used in tandem with outright purchases to protect whole landscapes while sustaining appropriate and traditional rural land uses. Moreover, an easement selectively targets only those rights necessary to protect specific conservation values, such as water quality or migration routes; thus funds are used only to retire those targeted rights.

CONSERVATION BUYERS

In recent years, the Conservancy has bought land in critical conservation areas (especially land that buffers and surrounds core natural areas), placed conservation easements on the land and then resold the restricted property. This is referred to as a "conservation buyer" project. In most cases, the purchasers of these properties are willing to forego valuable rights to subdivide or otherwise develop their lands in perpetuity through conservation easements, and the Conservancy holds these rights in trust. In accordance with Conservancy policy, conservation buyer properties must be widely marketed before being sold to private individuals.

Compared to the Conservancy's other conservation land protection tools, such as outright fee purchase and donations of land, the conservation buyer tool is used relatively infrequently. Since 1993, the Conservancy has sold approximately 175 parcels of land to conservation buyers out of a total of approximately 12,000 conservation land transactions. Today, the conservation buyer strategy is growing in use. It is a cost-effective tool that can ensure that future owners of important conservation lands share in the conservation spirit, benefiting wildlife, water quality, farmland, open space and communities.

ASSISTING WITH CONSERVATION EASEMENTS

Sometimes the Conservancy helps structure land transactions involving a conservation easement, but is not the party that holds the easement. In these cases, known as "assists," our partners—such as other land trusts, private organizations or state agencies—hold the easements with the consent and input of the landowner. Conservancy assists have protected approximately 984,000 acres of land in the United States, and more than 13,000 acres internationally.

THE GROWTH OF EASEMENTS

More than 1,260 land trusts around the country rely on conservation easements as an effective, efficient way to protect open space, farmland and natural areas. The National Land Trust Census in 2000 found that local and regional land trusts have protected more than 6.2 million acres of open space, an area twice the size of

Connecticut. Of this, nearly 2.6 million acres have been protected by conservation easements, almost a fivefold increase since 1990.³

The Nature Conservancy has similarly experienced an increased growth in the use of conservation easements. In January 1997, the Conservancy had protected 645,000 acres through conservation easement acquisitions in the United States. By June 30, 2003, that figure had swelled to more than 2 million acres protected through conservation easement acquisitions, out of a total of 15.3 million acres of land protected by the Conservancy in the United States.

EASEMENTS BEYOND THE UNITED STATES

Conservation easements were pioneered in the United States using existing laws and enabling legislation, but over the past decade, their use has been expanding into Latin America, Canada and the Caribbean. Recently, they have reached places with little or no tradition of private lands conservation such as Australia. In Latin America, for instance, most conservation work has been centered on national and regional parks and reserves; yet, for example, in Mexico and Brazil, more than 80 percent of the land inside federally decreed protected areas is private. The long-term protection of these places is in jeopardy without private lands conservation.

In Costa Rica in the early 1990s, both the first conservation easement in Latin America and the first land trust were structured by the Costa Rican Environmental and Natural Resources Law Center, advised by The Nature Conservancy. Today the Conservancy's Private Lands Program aims to use the organization's experience in the United States to develop land conservation tools internationally.

The Conservancy has been granted easements on approximately 30,000 acres in Latin America, the Caribbean and Canada, and has assisted other conservation groups or government agencies with easements on approximately 13,000 acres. The organization has helped structure or is currently helping establish easements in 12 countries, including helping with the legal reviews necessary to enable easements. Many other in-country private conservation organizations also are currently negotiating easements.

¹ "Purchase of Development Rights: Conserving Lands, Preserving Western Livelihoods," Trust for Public Land, Western Governors Association, and National Cattlemen's Beef Association, 2001.

² "Fact Sheet: Why Save Farmland?" American Farmland Trust Farmland Information Center, May 2002.

³ National Land Trust Census, Land Trust Alliance, September 12, 2001.

ADDITIONAL INFORMATINO ON CONSERVATION EASEMENTS AND ORGANIZATIONS THAT PROMOTE THEM

- Land Trust Alliance at <http://www.landtrustalliance.org/what-you-can-do/conserv-your-land/questions>
- Ducks Unlimited at <http://www.ducks.org/conservation/land-protection/conservation-easements?id=2261&poe=GPPCAD&gclid=CPSCoZHE1c0CFQ9ZhgodY1oLRg>
- North Florida Land Trust at <http://www.northfloridalandtrust.org/?gclid=CITYiKPE1c0CFcJahgodrNcGfA#!pre-serve-your-land/c2yv>
- National Conservation Easement Database at <http://www.conservationeasement.us/>
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