

## CONSERVATION EASEMENTS - A PRIMER

A study by the Land Trust Alliance, the national umbrella for all local land trusts shows that total amount of private land conserved by local, state and national conservation organizations more than doubled between 2000 and 2010 - from 23 million acres in 2000 to 47 million in 2010 (nearly double the size of all national parks in the lower 48 states). There was an 89% jump in the West from 2.5 million acres in 2000 to 5.2 million in 2005.

Hopefully, a tipping-point has been reached because our nation has been experiencing a 2.8% population increase but a whopping 7.2% increase in land consumption and the West is growing three times faster than the rest of the country. Conservation easements are a good way to stop this assault, protect working farms, ranches and other acreage. There has never been a better time to pursue this than now. The following is intended as a primer on why and how.

In its simplest form a conservation easement (C/E) is like a "deed restriction." Let's say the seller of a 2½ acre lot next to his home wants to protect the view of the surrounding mountains. To insure his view is preserved, the seller can place a restriction in the buyer's deed limiting construction to a single story home. If the buyer tries to build a two-story house, the seller can stop the offending buyer or any later owner from obtaining a building permit or even force him to remove the second story of the house by enforcing the deed restriction. Similarly, a C/E is a recorded document that can, among other things, require a ranch remain in ranching forever and never be developed or subdivided. This protection and limitation on future use is the core component of all C/Es, pro-ranching or otherwise. There are a number of specific things the owner can agree to avoid - typically things he wouldn't do anyway or would do only because he needed the money - like disallow commercial gravel pits, race tracks, cement plants or industrial facilities.

A C/E can either be sold or donated to a land trust that is then legally obligated to insure compliance by performing an annual inspection. If the landowner or successor tries to sell off some land (assuming the C/E does not allow this) or otherwise violate a term of the C/E, the trust - only the trust and not others - can stop the sale or prevent other violations of the C/E.

Currently, the federal tax incentives associated with conservation easement donations allow for a landowner to deduct 50% of their adjusted gross

income and carry forward unused portions of that deduction for an additional fifteen years or until the donation value is used up, whichever occurs first. Qualified farmers and ranchers who earn at least 50% of their income from agricultural activities may be eligible for a 100% deduction for a conservation easement donation and can carry unused portions of that deduction forward for an additional fifteen years. It is important to note that the federal tax incentive is a deduction, not a credit.

The State of New Mexico has a tax credit program for donations of land or conservation easements, but more importantly, these tax credits are transferable, meaning the landowner can sell the tax credit at a discounted rate.

The following example illustrates: the two key provisions in recent changes - 50% yearly tax credit instead of 30% (or 100% if eligible) and a 15-year tax credit "carry-forward" as well as the two key financial benefits of donating a conservation easement, avoidance of both income and estate taxes. Of course, the core goal of C/E as seen from the perspective of the ranching community is protection: both preservation of ranches and the ranching way of life. For non-ranchers, emphasis is the conservation ideal of preventing urban sprawl and preserving open spaces. At the risk of over-simplification, assume: [1] a ranch value of \$3 million, [2] a 50% diminution or reduction in value of the ranch after the C/E is put in place, [3] an average yearly income of \$100,000 and [4] a 40% tax bracket that would leave the rancher with \$60,000 after taxes. The math would then read like this:

	\$3,000,000 - ranch value before C/E
Minus	\$1,500,000 - less reduction in value after an appraiser determines the new value due to forfeited development rights
Equals	\$1,500,000 - ranch value after C/E

The result: taking a 100% or \$100,000 tax credit in the first year saves \$40,000 for that year and because the rancher used only \$100,000 of the available \$1½ million deduction, s/he can "carry forward" the balance and take another credit for 14 of the next 15 years (a total deduction approaching the diminution in value resulting from voluntarily giving up the higher development or subdivision value of the property), a tax savings of \$600,000 (\$40,000 X 15 years).

As mentioned earlier, there is a second tax benefit - state, rather than federal - in New Mexico: a \$250,000 transferable, tax credit (not a deduction). The landowner may use this credit for up to 20 years to offset his/her state tax liability or sell part or all of the credit at a discounted rate (of approximately 80%) in increments of \$10,000. There are brokers who sell these to the individuals and companies in New Mexico who need tax relief. Currently, New Mexico allows joint tenants to each access the tax benefit, thereby allowing a husband and wife to double the benefit or up to \$500,000.

There are other potential estate tax savings but that discussion goes beyond the scope of this primer. Importantly, even though the ranchland may not appreciate as much annually as it would have without the C/E - some would argue that value may actually increase - the value from our example will essentially remain \$1½ million less for estate tax purposes with the C/E than without it. So, C/Es offer three basic tax benefits:

1. Reduction in value of the gross estate subject to taxation for estate tax purposes,
2. Charitable deduction on your Federal taxes and
3. Tax credit on State taxes or proceeds from the sale of the benefit.

These rules are complex and not subject to a short illustration but these comments provide the basic advantages from both the tax and land protection perspective.

One can see why C/Es are thought of as a device for "saving the ranch" or "salvaging the West." Of course, if one is not truly committed to preserving "the ranching way of life," preserving "open spaces" or has some family circumstance that precludes one from availing him/herself to this tool, one can pay the yearly income tax as always, contend with the estate tax but keep the "ace in the hole" and sell out to a developer for the one time big return. Severe economic need or estate taxes may require selling the ranch and this approach has often been a retirement plan for many ranchers - security for the rancher but destructive of the Southwest. But a sale means the end of cattle ranching, the rural life way and open space for wildlife. C/Es are a way to avoid what many see as an undesirable trend in the Southwest that will fracture the land that many have come to love.

Because of abuses by developers in Colorado and the state's serious loss of tax revenue, most states have taken a closer look at C/E and New Mexico is

no different. New Mexico has a "certification" process that reviews each easement and supporting documents to insure it has conservation values worthy of protection. At the same time, C/Es means the state forego revenue. There is a worrisome conflict between the Tax and Revenue Department's function to collect revenue for the state verses its additional and newer function to insure appraisals fairly reflect the reduced land value. The conflict is this: the higher the value placed on the land and diminution in value due to the easement, the less state tax revenue, tempting Tax and Revenue appraisers to low-ball valuations, just as landowners are tempted to do the opposite.

There is an up-front downside that does create a hurdle for the rancher or anyone putting a C/E on their property. The IRS carefully scrutinizes C/Es, there are statutory requirements that must be met and professional services are required to insure compliance with these somewhat arcane criteria. The following is a typical breakdown of the \$30,000 to \$50,000 it costs to complete this process. Of course, this cash outlay will most likely be recovered when one files his/er tax return or sells the easement but it is a cash flow burden. There are some thoughts being given to ways of helping out the rancher by "fronting" funds or making loans available to the rancher but nothing has yet to materialize:

1. Appraisal	\$10,000 (as high as \$20,000)
2. Mineral Report*	\$2,000 - \$4,000
3. Stewardship fee**	\$10 000 - \$15,000
4. Lagal fees	\$5,000 - often less
5. Baseline report	\$2,000 - \$4,000
6. recording dated title report, archeological records, copies, mailing	\$1,000
7. Environmental assessment***	\$2,000 \$4,000
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Total	\$32,000 to \$50,000

\* This is only required when mineral rights are not owned by the rancher.

\*\* This is a fee the rancher pays the land trust to which the C/E is donated, covers the cost of required yearly monitoring forever and possible litigation if it becomes necessary to enforce the terms of the C/E. It can reflect the size of the ranch so this fee could go

up or down.

\*\*\*This is only required if there are known or suspected environmental hazards on the subject property.

New strategies for ranch preservation are necessary if the destructive long-term effects of development pressures are to be avoided and short-term benefits of sale are to be trumped. The conservation easement is a strategy that habitat preservation groups, the Federal and State governments and ever-more numbers of ranchers are standing behind. This is little more than a "primer" to let as many ranchers and other landowners as possible become acquainted with the benefits of conservation easements, but if you want to look further:

- There is a helpful book on this subject: *Saving the Ranch: Conservation Easement Design in the American West*, by Anthony Anella and John B. Wright.
- There is an excellent state land trust that aids ranchers and landowners in general: Scott Wilber, New Mexico Land Conservancy, P.O. Box 6759, Santa Fe, NM 87505 ([505] 986-3801, [scottwilber@nmlandconservancy.org](mailto:scottwilber@nmlandconservancy.org)). This trusts can connect you to the necessary experts and offers a "turn-key" program.
- The certification process is overseen by the State of New Mexico, Energy, Minerals and Natural Resources Department, 220 So. St. Francis Dr., Santa Fe, New Mexico, 87506 (505) 476-3347.
- The broker we used and thought well of for sale of transferable tax credits is Ariel Steele, Tax Credit Connection, Inc., 903 W. Alameda, #W209, Santa Fe, NM 87501, (505) 629-9651, [ariel@taxcreditconnection.com](mailto:ariel@taxcreditconnection.com).

One of NMLC's advisors, Sid Goodloe, is a rancher who for 12 years ran the Southern Rockies Agricultural Land Trust, an agricultural land trust focused on preserving working ranches and western heritage. We donated our easement to SRALT. In 2011, SRALT transferred its easements to NMLC and Mr. Goodloe agreed to serve on NMLC's board as part of this transition. As an advisor, Mr. Goodloe is willing to speak with landowners about the benefits and implications of placing ranches under conservation easements. He can be reached at: Carrizo Valley Ranch, P.O. Box 598, Capitan, NM 88316 [505] 354-2379, [goodloesid@gmail.com](mailto:goodloesid@gmail.com).

A.T. Cole is a retired lawyer and co-owner with Cinda Cole of a cattle ranch southeast of Silver City, New Mexico: the Pitchfork Ranch, 15.15 Separ Road, Silver City, New Mexico, 88061, 575.574.8593,

atandcinda@starand.net Cole prepared their conservation easement, but is not licensed to practice law in New Mexico, We are committed to the benefit of conservation easements and are thus willing to field general inquiries - without charge - about them and direct interested landowners to people or agencies who can facilitate the process of protecting their property with a conservation easement. (Draft #14, 1/13/2013).

8/3/15 – If you intend to sell your transferable tax benefits, a recent tax court ruling ruled that to obtain capital gains tax treatment instead of ordinary income, you must hold for one year.