

NEW MEXICO LAND CONSERVANCY

Preserving New Mexico's Land Heritage

FREQUENTLY ASKED QUESTIONS ABOUT CONSERVATION EASEMENTS

Conservation easements are a way to protect open lands such as farms and ranches, wildlife habitats historic and cultural sites, and scenic vistas from development, while keeping them in private ownership. Conservation easements are a free-market technique with the following characteristics:

- Voluntary - the landowner decides if a conservation easement is right for his/her land and family
- Flexible to meet the needs of landowners
- Financially compensate landowners
- Pro-private property rights
- Pro-agriculture
- Pro-family
- Keep land in private ownership and on the tax rolls
- Cheaper than buying land outright

What is a conservation easement?

A conservation easement is a type of voluntary, land protection agreement between a landowner and a land trust that contains certain restrictions on the subdivision, development and use on the landowner's property in order to protect significant resources such as productive agricultural land, ground and surface water, wildlife habitat, scenic views, cultural and historic sites, or recreational lands. Landowners agree to voluntarily give up part or all their development rights in perpetuity by granting a conservation easement to a qualified conservation organization such as the New Mexico Land Conservancy. The terms of a conservation easement are flexible and are negotiated between the landowner and the land trust. Each conservation easement is tailored to each specific property and the conservation goals of the landowner. Once the final conservation easement is completed, it is signed by both parties and recorded in the county real estate records just like any other deed.

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 family agriculture 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 the main purpose of a conservation easement?

Primarily to restrict subdivision and keep most housing and commercial development off the land. Conservation easements may also be used to prevent certain land use practices (such as mining, clear cutting, etc.) and, at the discretion of the landowner, other uses that are inconsistent with the purposes of the conservation easement. Some conservation easements are intended to specifically protect wildlife, cultural and natural resources, and/or scenic open space. Other conservation easements are intended to specifically protect working farm, ranch and forest lands. With working lands, the goal is to find an appropriate balance between the proposed land use activities and the conservation values. Conservation easements typically allow farming and ranching, timber harvesting, hunting and other recreational uses of the land as long as these activities do not damage the land and conservation values. In some cases, limited development and conservation easement lands are even combined in the form of “conservation developments.”

Why should I consider a conservation easement?

To conserve land - to keep the ranch, farm, or other land in the family and in production. To be compensated for development rights through tax-deductions or in cash that can be used to pay down debt or be reinvested into the land/resources and or production activities.

How long do conservation easements last?

While there are term easements, typically conservation easements are perpetual agreements that run with the land forever and bind all future owners of the subject property. Income and estate tax benefits are only available to landowners who donate perpetual easements.

Do I still own my land?

Yes. Owners of working lands can still farm or ranch it and lease or sell it anytime for whatever price they can get on the open market. While the easement reduces the value of the subject land at a rate equal to the value of the development rights being restricted, the easement does not freeze the value of the subject land. In addition, conservation easements can actually increase the value of any residual, adjacent land that a landowner chooses not to place under an easement.

Do I have to give up all of my development rights?

No. Landowners and the land trust can discuss this on a case by case basis. Landowners sometimes choose to reserve homesites for future development for their children or their retirement.

Do I still pay my property taxes?

Yes, but, depending on the amount of development rights given up, the land will generally be taxed as agricultural land not as developable land. There may also be protection against dramatic property tax increases if a subdivision shows up near your property.

Will a conservation easement reduce the value of my property?

Because conservation easements restrict subdivision, development and certain uses of the land, they typically do reduce the value of the subject property. This is generally the goal when the easement is being done for estate tax purposes. However, while an easement may reduce the value of the property, it does not freeze it. Easement encumbered land still increases in value over time.

Will a conservation easement prevent me from borrowing against my property?

No. Loans are typically made based on the agricultural value of the ranch. Lenders routinely make operating and other loans on ranches under easement.

Do I have to allow public access?

No, unless that specific right is granted by the landowner.

Will the easement interfere with farming and ranching?

No. With agricultural conservation easements, the main purpose is to keep the land as it is, including growing crops, raising cattle, and other historic uses.

Am I locked into my current agricultural practices?

No. Conservation easements are written to allow changes in agricultural practices. New technologies are welcomed as long as they do not negatively affect the conservation values that the conservation easement protects. Furthermore, easements cannot require landowners to engage in farming and ranching if it is no longer economically feasible to do so. The point is to keep the land unsubdivided and relatively undeveloped.

What about mineral rights?

If you own them, you must prohibit hardrock and strip mining. Oil and gas development can occur in some cases. If you don't own the mineral rights, a minerals report may be required that must determine that the likelihood of commercial mineral development "is so remote as to be negligible."

What about water rights?

Most easements require that water rights remain with the land and that sufficient water be used to protect the conservation values and keep the land productive.

Is a conservation easement the same as a government regulation?

No. Conservation easements do not involve government regulation at any level, not even at the local zoning level. Conservation easements are a voluntary, free-market technique that provides tax and financial incentives in exchange for giving up certain land use rights. Conservation easements are not a “taking” like a condemnation for a road right of way. Conservation easements are voluntarily donated or sold by the landowner.

How common are court cases over violating easement terms?

Uncommon - to date, only a handful of lawsuits have had to be resolved in court. In all these cases, the landowner committed a major violation of a restriction in the easement, like building new structures or roads that were not permitted, or clear cutting an entire forest.

Who can receive and hold a conservation easement?

A qualified, non-profit (501(c)(3)) conservation organization - typically a land trust - or a qualified government land management agency. In order to be considered “qualified” to hold a conservation easement, the land trust or public agency must have land conservation as an essential part of its mission and should have sufficient capacity and resources to monitor and legally defend the easement over the long-term.

How common are conservation easements?

Very common - over 25 million acres of private land have been protected nationwide through the use of conservation easements over the past 100 years, approximately half acres of which have been on working farm, ranch and timber lands. In New Mexico, over one million acres have been protected through the use of conservation easements.

For further information, contact:

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