

CONSERVATION EASEMENTS

Presented by Claire Fiegener, Greenbelt Land Trust

Topics to be Covered

- What is a conservation easement?
- What is a land trust and how do they relate to conservation easements?
- What sorts of restrictions do conservation easements place on landowners?
- How can conservation easements benefit landowners?
- What is involved in creating a conservation easement?

Fine Print

- This presentation provides basic information on conservation easements.
- Anyone involved in granting a conservation easement should contact qualified professionals for legal and financial planning assistance.

Property Ownership

- Property ownership is a collection of individual rights
- This collection of rights is often compared to a “bundle of sticks” because individual rights can be removed from the collection just as a stick can be removed from the bundle



Examples of Property Rights Transfers

- Lease – right to exclusive possession
- Easement – right to use
- Zoning
- Deed with restrictions - retention of rights
- Conservation easement

What is a conservation easement?

- Legal, voluntary agreement between a landowner and a land trust or government agency that restricts the development or use of property
 - ▣ In effect, conservation easements remove the right to develop the property from the landowner's "bundle of sticks"
 - ▣ Conservation easements "run with the land" - they bind both current and future landowners
 - ▣ Conservation easements are perpetual

Conservation Easements

- Land trusts and government agencies can leverage resources by only acquiring the rights relevant to their goals.
- Landowners retain all other rights.

What is a land trust?

- A non-profit organization that holds land and/or the rights to enforce the provisions of conservation easements “in trust” for the public good

How can conservation easements benefit landowners?

- Preserve desired land uses into the future
- Allow continued use of the land
- Potential source of income
- Possible tax benefits
 - ▣ Property Taxes
 - ▣ Income Taxes
 - ▣ Estate Taxes

Conservation Easements as a Possible Source of Income

- Some land trusts and government agencies can pay full value for the rights extinguished in a conservation easement
- More often, they are only able to acquire these rights through either a “bargain sale” (below fair market value) or a donation

Property Tax Benefits

- Conservation easements often decrease the value of property because they prevent the possibility of future development
 - Difference can be dramatic
 - Potential savings are often reduced if the land is already being assessed for its current use and not fair market value
- Conservation Special Assessment

Tax Benefits of Income Tax Deduction

- Donation or bargain sale may qualify as a charitable income tax deduction for the difference in value of the property before the easement was granted compared to the value of the property after the granting of the conservation easement – can be used for a period of up to 6 years for grantor of easement.
- To qualify for federal income tax benefits, a conservation easement must meet certain requirements specified in Section 170 of the Internal Revenue Code

Tax Benefits of Income Tax Deduction

- May be used against ordinary income as well as capital gains (26USC 170(e)).
- Limited to basis until property is owned for one yr., or elect to limit to basis with 50% limitation of AGI (26USC 170 (b)(e)).
- Limited to fair market value – limited to 30% of AGI (26USC 170 (b)(e)).
- May be used in the year of donation and each of the following 5 years (5 year carry-forward) (26USC 170(d)).
- Tax benefits for Entities-
 - C-Corporation: deduction may be limited to 10% of corporation contribution base.
 - S-Corporation: deduction passes through to shareholders but limited to their basis in their stock.
 - Partnerships, LLC's: deduction passes through to owners without basis limitation.

Enhanced Easement Tax Incentive

- Pension Protection Act 2006 –currently expired on Dec. 31, 2014.
 - Raises the deduction a donor can take for donating a conservation easement from 30% of their AGI to 50%.
 - Allows qualifying farmers and ranchers to deduct up to 100% of their income
 - Qualified=a taxpayer whose gross income from the trade or business of farming (per 2032A(e)(5)) is greater than 50% of gross income for year (also applies to farmers who are organized as C corporations).
 - Property must remain available for agriculture and livestock production.
 - Extends the carry-forward period for a donor to take tax deductions for conservation easement from 6 to 16 years.

Estate Tax Benefits

- In 2013, Congress provided permanent estate tax relief, setting the unified credit at \$5 million per individual, indexed for inflation, with a 40% rate.
- Reduction in Value-Section 2055(f) recognizes that property encumbered by a conservation easement is valued for estate tax purposes as restricted, rather than at its unrestricted value.
- The 2031(c) Exclusion – provides an estate tax exclusion of up to 40% of the encumbered value of land (but not improvements) protected by a “qualified conservation easement.”
- Conservation easements are interests in real property that can be used in tax-free, like-kind exchanges.

Steps Involved in Granting a Conservation Easement

- Locate a receiving entity
- Compile a baseline inventory
- Negotiate and draft the terms of the conservation easement
- Execute and record the documents
- Get the property appraised

Steps Involved in Granting a Conservation Easement

- Locate a receiving entity
 - Must be a “qualified organization” for income and estate tax purposes
 - Compatible and stable partner
 - National Accreditation
 - Must be willing to purchase or accept a donation of the conservation easement
 - Typical factors considered include current use, size and location of the property and costs of acquiring, monitoring and enforcing the conservation easement
 - Timeline to complete project

Steps Involved in Granting a Conservation Easement

- Compile required Due Diligence
 - Title Review
 - Survey
 - Environmental Site Assessment
 - Subordinations
 - Baseline Inventory Documentation
 - Appraisal
 - Legal Review
 - Title Insurance

Steps Involved in Granting a Conservation Easement

- Negotiate terms
 - For working lands, landowner should seek not only to retain rights for current uses, but also the flexibility to allow future changes in operations
 - Receiving entity will seek meaningful and enforceable restrictions relevant to its mission
 - Terms that Conservation Easement must address to qualify for tax benefits

Qualifying for Federal Income Tax Deduction

- Must be a “qualified conservation contribution”
 - Qualified real property interest
 - An easement or other interest in real property that under state law has attributes similar to an easement (26 USC 170 (h)(2))
 - Donated to a qualified conservation organization
 - 501(c)(3) charitable org., or government entity (26 USC 170(h)(3)), with resources and commitment to protect conservation values in perpetuity.
 - For conservation purposes exclusively or one or more of the following:
 - Outdoor recreation or education of the general public
 - Protection of relatively natural habitat
 - Preservation of open space, including farmland and forestland
 - Preservation of historically important land

Qualifying for Federal Income Tax Deduction

- Easement must be granted in perpetuity
- No Surface mining permitted
- Grantor must own mineral rights
- Mortgage holders must subordinate to conservation easement
- IRS code 170(h) (26 USC 170) and Treasury Regulations 1.170A-14 (26 CFR 1.170A-14)

Steps Involved in Granting a Conservation Easement

- Conservation easement valuation – “Qualified Appraisal”
 - ▣ Before and after method
 - ▣ Timing –can be completed no earlier than 60 days before easement is donated an no later than filing of landowner’s tax return
 - ▣ Enhancement of other property owned by donor or related person
 - ▣ Contiguous land/related parties

Steps Involved in Granting a Conservation Easement

- Execute and record the documents
 - ▣ Conservation easements must be executed by all current owners of the property
 - ▣ Mortgage subordination at time of closing
 - ▣ Conservation easements are publicly recorded with other land records

Other Landowner Considerations

- Future borrowing power
- Impacts of increasing property values
- Conditions under which the terms of the conservation easement can be modified or invalidated

Conclusion

- Conservation easements are an attractive way to preserve current land uses
- Conservation easements may have other significant benefits for landowners
- Conservation easements are legally binding agreements that should not be entered into without great care and thought
 - ▣ Especially true for working lands

Comments or Questions?

- For additional information contact Claire Fiegenger at the Greenbelt Land Trust

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