



Understanding Agricultural Conservation Easements

A Voluntary Solution to Ag Land Protection

All across the western United States, urban encroachment and development pressures are taking their toll on our ranch and farm landscapes. To stop this crippling loss, ranchers, farmers and local communities are exploring the use of agricultural conservation easements. A conservation easement is a practical protection tool that can offer benefits to agricultural producers and their land as well as Colorado's residents and visitors.

Our Mission

The Colorado Cattlemen's Agricultural Land Trust protects productive agricultural lands and the conservation values they provide by working with ranchers and farmers, thereby preserving Colorado's ranching heritage and rural communities.

CCALT History & Accomplishments

The Colorado Cattlemen's Agricultural Land Trust (CCALT) was formed in 1995 by the membership of the Colorado Cattlemen's Association (CCA) to help Colorado's ranchers and farmers protect their agricultural lands and encourage intergenerational transfer of ranches and farms. CCA was the first state livestock association in the nation to form a land trust. More than 30 land trusts operate in Colorado and until CCALT's founding none exclusively served the needs of the agricultural community.

The Land Trust partners in protection with landowners on productive agricultural acres statewide. CCALT was created with the primary interests of the landowner in mind. *CCALT is a land trust of landowners, by landowners, and for landowners* and does not solicit landowners for potential conservation projects. Interested landowners contact us if they would like more information. Our primary emphasis is to increase awareness among farmers and ranchers about the use of easements.

We have responded to requests by local livestock associations, community groups and others to speak at meetings and present informational workshops.



Understanding Agricultural Conservation Easements

What is a conservation easement?

An conservation easement is a voluntary, legally-recorded agreement between the landowner and CCALT (or another qualified conservation organization). Generally, easements permanently prohibit or severely limit any practice such as subdivision or development that would damage the land's agricultural/conservation value or productivity. Landowners sell or donate development rights on their property to the organization receiving the easement. These rights are then extinguished by the organization and cannot be sold or used in any manner - even when the property is transferred or sold.

Each conservation easement is specifically tailored and written to fit the needs of the landowner and conditions of the individual property. They restrict development but let the landowner keep their land's traditional uses, i.e. haying, raising cattle, hunting, etc. While some landowners may choose to provide public access in their easement, they are not required to do so.

What are the benefits of a conservation easement?

Protection of agricultural land: Landowners are able to protect his or her property through a conservation easement to ensure that future generations have the continued opportunity to stay in production.

Tax benefits: Landowners who donate development rights through perpetual easements may be eligible for significant financial benefits through the reduction of federal income, gift, and estate taxes as well as state income tax credits in Colorado. Proceeds from the state tax credit may be used to buy out partners, reduce debt or to purchase land and equipment to expand the ranch business.

Additional value for the surrounding area: Protecting agricultural land through conservation easements can help maintain the viability of a region's agricultural economic base. Easements also offer a way for communities to work together to protect their scenery, natural resources, wildlife habitat and quality of life while land stays in agricultural production and on local tax rolls.

What are some of the preliminary steps a landowner should take before starting this process?

First, find a land trust that is compatible with your conservation goals to discuss your options. Second, hire an appraiser to determine the potential value of an easement on your property. If there is a mortgage on the property, the lender must agree to release or subordinate it to the easement. In addition, if any mineral rights have been severed, a geologist's report is required to determine the likelihood of surface extraction.

These steps ensure the easement is fully enforceable and that the landowner's conservation objectives can be met. Landowners should always consult their own attorneys and accountants for advice specific to their individual needs.



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How is the value of an easement determined?

Land ownership can be viewed as owning a bundle of rights on a property: the right to plant corn, the right to cut timber, the right to graze cattle, and the right to build homes, etc. When a landowner voluntarily removes one or more of those rights from his or her bundle, the value of the land is affected.

The value of a conservation easement is the difference between the value of the land without any restrictions and the value of the land after restrictions are defined by a conservation easement. In most cases, this value is driven by the property's development potential. When the easement qualifies under IRS regulations, that amount is also usually the value of the charitable donation. Land values differ greatly throughout Colorado - in areas where there is intense development pressure the value of the easement may be greater. Easement values must be determined by a qualified appraiser.

Income tax deductions and credits example

The appraised value of John Smith's easement is \$800,000. If his federal adjusted gross income in the year of the easement donation is \$50,000, he would be able to deduct the entire \$50,000 in the first year because he qualifies for a 100% deduction under the current federal tax law. Since the value of the easement is greater than his allowable deduction, Smith also would be able to deduct \$50,000 for each of the next 15 years (assuming a constant adjusted gross income from agriculture of \$50,000). His total federal deduction would be \$800,000.

If Smith is a Colorado taxpayer, this donation would also qualify him for a \$375,000 Colorado State Income Tax Credit, which is 50% of \$750,000 (the maximum credit you can claim). These credits can be sold at 75-80% of their face value. Therefore, Smith could generate \$281,000 - \$300,000 in cash income.

**Example only - please consult your legal and financial advisors.*

Determining an easement's value example

John Smith decides to donate an agricultural conservation easement on his 1,000 acre ranch to CCALT. If the property's current value is \$2,000/acre, its **total fair market value**, before an easement is in place, would be:

$$1,000 \text{ acres} \times \$2,000/\text{acre} = \$2,000,000$$

If placing an easement on the property (and removing the non-agricultural development rights) lowers the value to \$1,200 an acre, the **total market value of the restricted property** would be:

$$1,000 \text{ acres} \times \$1,200/\text{acre} = \$1,200,000$$

The difference between the before and after values is \$800,000, and would become the value of the easement donation.

$$\$2,000,000 - \$1,200,000 = \$800,000$$

**Example only - please consult your legal and financial advisors.*

Federal income tax benefits: Under federal law, a qualified conservation contribution can be treated as a charitable gift. The value of the gift can then be deducted at an amount of up to 50% of a donor's adjusted gross income. The law allows qualifying farmers and ranchers to deduct up to 100% of their income. If the easement value exceeds 50% (or 100% for qualified ranchers) of the donor's income, the excess can be carried forward and deducted in each of the following 15 years.

State income tax benefits: In Colorado, 50% of a conservation easement's fair market value up to \$750,000 is treated as a credit against state income taxes for Colorado taxpayers. Any portion of that tax credit which is not used in the year of the gift may be carried forward to pay Colorado income tax for up to 20 years. Colorado State Income Tax Credits are also transferable. Colorado farmers and ranchers regularly sell their credits to other taxpayers, thus enabling easement donors to realize a cash return for their easement donation. These credits can sell at 75-80% of face value (see example on left).

How are the tax benefits of an easement calculated?

The situation surrounding estate taxes, federal income tax and the Colorado State Income Tax Credit fluctuates and current regulations may change in the future. The examples here are current as of January 2011. CCALT strongly encourages all landowners to work with experienced advisors in tax and estate planning.



Property tax benefits: In Colorado, agricultural land is assessed at a rate based on production value and this assessment is locked in by placing an easement on the land. An easement does not remove land from the local tax rolls and should not impact property taxes.

Estate tax benefits: The donation of an easement, whether during a landowner's lifetime or in their will, can reduce the value of the farm or ranch upon which estate taxes are calculated. The current minimum value of an individual estate to be taxed is \$5 million and 35% tax rate for 2011-2012.

If the easement qualifies under certain additional provisions of the Taxpayer Relief Act (2031c), then forty percent (40%) of the value of the property after the granting of an easement can be excluded from the value of the estate up to a maximum exclusion of \$500,000. Reducing this tax burden through an easement donation can help ensure that their family does not have to sell the property to pay estate taxes.

Does a conservation easement affect property rights?

A landowner who donates an easement retains all rights to use land for agricultural operations and for any purpose that is not prohibited by the terms of the easement. While an easement removes the development rights, the landowner still holds the title to the property, the right to restrict public access, and the right to sell, give or transfer the property.

Can some development be allowed under an easement?

Conservation easements are flexible documents. While agricultural easements generally restrict non-agricultural use



of the land, continued

ranching and farming are permitted, and some very limited development may be allowed. Other uses of the land such as hunting and fishing are not restricted.

For example, an easement generally permits the construction of new farm buildings and can allow construction of a carefully located home for family members. The easement may be written to apply to the entire property or only a portion of it. The flexibility of these and other restrictions will vary with the characteristics of the property, the conservation objectives, and the land trust.

What rights does the land trust have to the land?

The organization holding the easement is required to monitor and enforce the terms of the easement. To accomplish this, a representative will visit the property at least once every year to ensure that the terms of the agreement are being upheld. The visits are always scheduled with the cooperation of the landowner. This does not mean, however, that CCALT or any other group has the right to use the land, nor does it allow public access for any reason.

Estate Tax Example

When Joe Brown passes his property on to his children, his estate could be subject to federal estate taxes.

The family ranch, consisting of 3,000 acres is worth: \$12,000,000

The value of the ranch with an easement is: \$6,500,000

To calculate the total taxable estate, his family would subtract the following from the \$6,500,000:

\$5,000,000 (standard exclusion
under federal estate tax law as of 2011)
and

\$500,000 (the easement's 2031c
estate tax exemption)

The total taxable estate value would then be:

\$1,000,000 (vs. \$6,500,000 without an easement)

At at 35%, the \$6,500,000 estate taxes will total:

\$350,000 (vs. \$2,450,000 without easement)

The family could also use the Colorado conservation easement tax credits to pay any estate tax liability. If the \$375,000 in credits generated by the conservation easement were brokered at 80%, the family would receive a cash return of \$300,000. This would enable the family to pay for all but \$50,000 in estate taxes with the proceeds from the Colorado Tax Credits. In this example, Joe Brown's estate tax liability would be lowered from \$2,450,000 to \$50,000 by using the conservation easement tool.

**Example only - please consult your legal and financial advisors*

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