



# Understanding Agricultural Conservation Easements

## *A Voluntary Solution to Ag Land Protection*

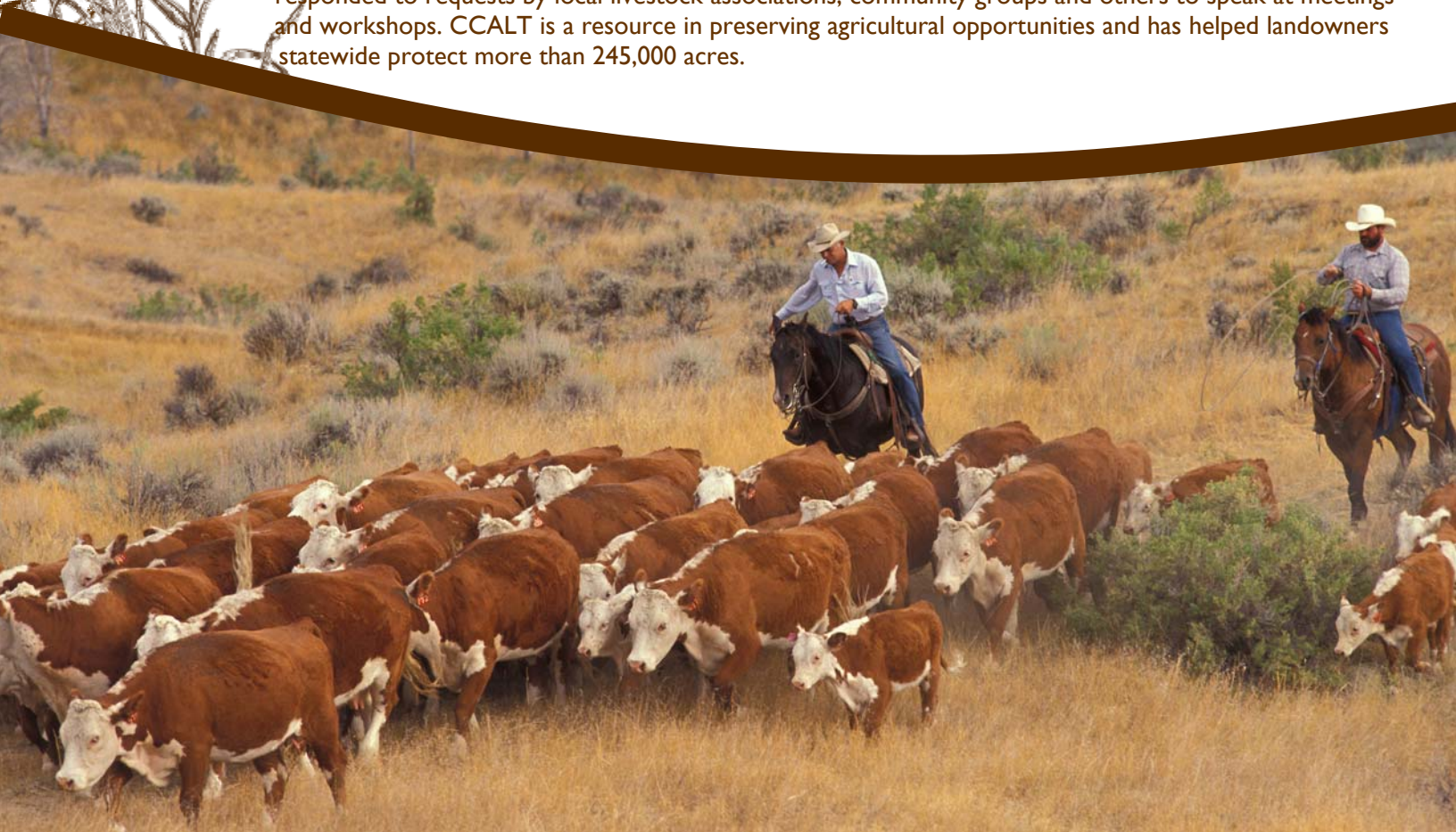
All across the western United States urban encroachment and development pressures are taking their toll. Between 1997 and 2002 alone, 1.26 million acres (690 acres/day) were converted to other uses—placing Colorado third in the nation for the amount of agricultural land lost.

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, their land and as well as Colorado's residents and visitors.

## *CCALT History & Mission*

The Colorado Cattlemen's Agricultural Land Trust (CCALT) was formed in 1995 by the Colorado Cattlemen's Association (CCA) to help Colorado's ranchers and farmers protect their agricultural lands and encourage continuing agricultural production for the benefit of themselves, their families, and all of Colorado's citizens. 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 willing landowners on productive agricultural acres all across the state. CCALT was created with the primary interests of the landowner in mind. It is a land trust **of** landowners, **by** landowners, and **for** landowners. The land trust does **not** solicit landowners. If landowners have an interest in protecting their property, they initiate contact with us. 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 workshops. CCALT is a resource in preserving agricultural opportunities and has helped landowners statewide protect more than 245,000 acres.



# Understanding Agricultural Conservation Easements

## *What is a conservation easement?*

An agricultural 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 individually 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?*

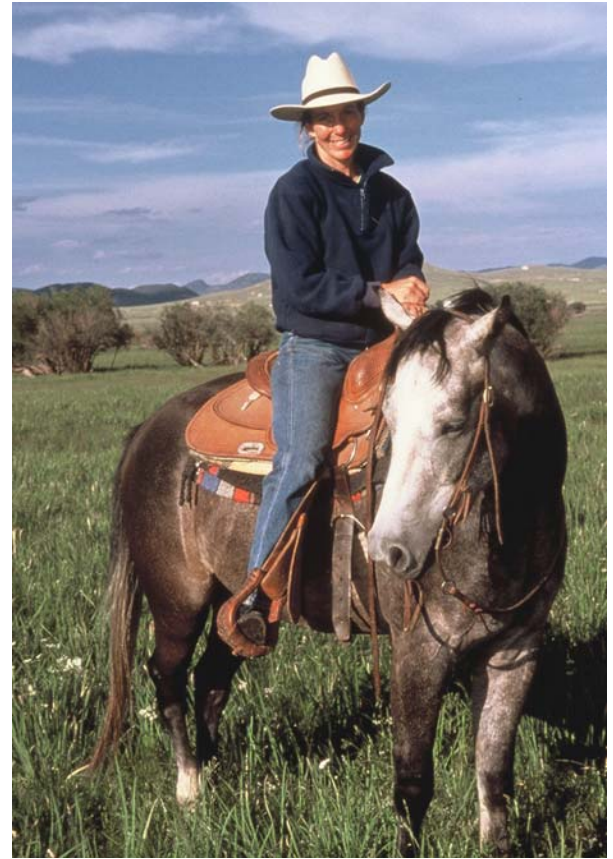
**Protection of agricultural land:** Profitability and economic survival are critical concerns in agriculture, as in any business. Unlike other business people, farmers and ranchers work directly with the land and, thus, have the most to gain from its proper care and management. Through a conservation easement, a landowner is able to protect his or her property 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 buyout partners or to purchase land to expand the ranch business. The value of these benefits depends upon the easement's appraised value and the landowner's financial circumstances.

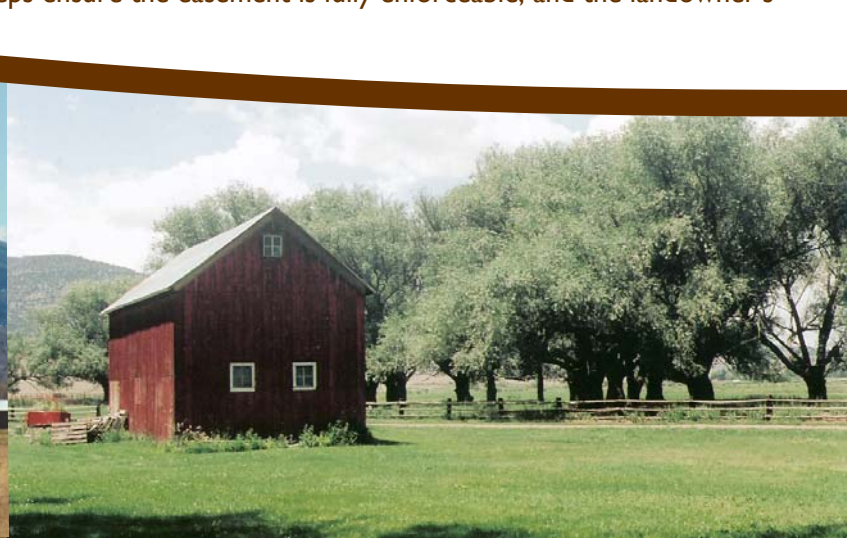
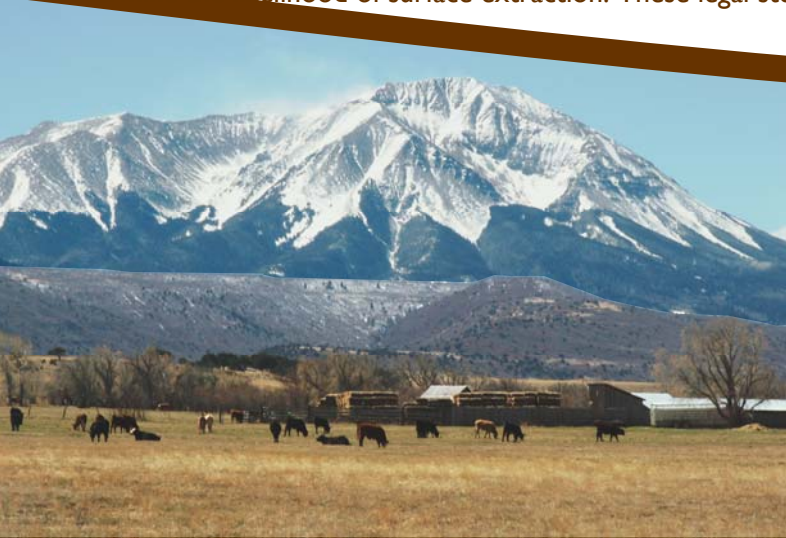
**Additional value for the surrounding area:** Protecting agricultural land through conservation easements can help maintain the viability of a region's agricultural economic base. Neighboring landowners who donate conservation easements can provide mutual protection against unplanned development, and share the benefits of protecting larger resource areas. 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 production and on local tax rolls.

## *What are some of the preliminary steps a landowner should take when placing an easement on his/her property?*

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. And, if any mineral rights have been severed, a geologist's report is required to determine the likelihood of surface extraction. These legal steps ensure the easement is fully enforceable, and the landowner's



Copyright Bill Gillette, Westcliffe, CO



## *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. 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.

## **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 \$1,500/acre, its **total fair market value**, before an easement is in place, would be:

$$1,000 \text{ acres} \times \$1,500/\text{acre} = \$1,500,000$$

If placing an easement on the property (and removing the non-agricultural development rights) lowers the per-acre value to \$800/acre, the **total market value of the restricted property** would be:

$$1,000 \text{ acres} \times \$800/\text{acre} = \$800,000$$

The difference between the before and after values is \$700,000, and would become the value of the **easement donation**.

$$\$1,500,000 - \$800,000 = \$700,000$$

*\*Example only—please consult your legal and financial advisors.*

## *How are the tax benefits of an easement calculated?*

**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 30% of the donor's adjusted gross income in the year of the gift. If the easement's value exceeds 30% of the donor's income, the excess can be carried forward and deducted (subject to the 30% limit) in each of the following 5 succeeding years. If a corporation is the donor, the limit is 10% of the taxable income. (Note: Updated as of September, 2006. Congress approved expansion of this tax incentive for conservation easement donations made in 2006 and 2007. The new law raises the deduction to 50% of a donor's adjusted gross income; allows qualifying farmers and ranchers to deduct up to 100% of their income and extends the carry-forward period to 15 years. The law is set to expire at the end of 2007.)

## **Income tax deductions and credits example**

The appraised value of John Smith's easement is \$700,000. If his adjusted gross income in the year of the easement donation is \$60,000, he would be able to deduct the entire \$60,000 in the first year because he qualifies for a 100% deduction under the new tax law. Since the value of the easement is greater than his allowable deduction, Smith also would be able to deduct \$60,000 for each of the next 10 years (assuming a constant adjusted gross income from agriculture of \$60,000). His total federal charitable deduction for the sixteen-year period would be \$660,000.

If Smith is a Colorado taxpayer, this donation would also qualify him for a \$350,000 Colorado State Income Tax Credit. Sold at 75-85% of its face value, Smith could generate \$245,000—\$280,000 in cash income.

*\*Example only—please consult your legal and financial advisors.*

**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. Any portion of that tax credit which is not used in the year of the gift may be carried forward and used to off-set 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 conservation action. These credits can sell at 75-85% of face value (see example on left).

**Property tax benefits:** In Colorado, agricultural land is already assessed at a lesser rate; and this assessment is locked in by placing an easement on the land. An easement does not remove land from the local tax rolls.



**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 1997 Taxpayer Relief Act set the minimum value of an individual estate to be taxed at \$2 million for 2007 with an increase to \$3.5 million in 2009. Additional tax legislation set a schedule for the lowering and eventual repeal of the estate tax by 2010. However, this same legislation also provides an option for the estate tax to be fully reinstated at 2000 levels in 2011.

In addition, if the easement qualifies under certain additional provisions of the Taxpayer Relief Act (2031c), then forty percent (40%) of the value of the property remaining after the granting of an easement can be excluded from the value of the estate up to a maximum exclusion of \$500,000. By reducing this tax burden through an easement donation, a landowner can help ensure that his or her family does not have to sell the farm or ranch just to pay estate taxes on it!

The situation surrounding estate taxes is in flux and current regulations may or may not apply in the future. CCALT strongly encourages all landowners to work with experienced advisors in tax and estate planning.

### *How does a conservation easement affect property rights?*

A landowner who donates an easement retains all rights to use land for any 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 – which remains subject to the

easement's terms for future landowners.

### *Can some development be allowed under an easement?*

Conservation easements are flexible documents. While agricultural easements generally restrict all non-agricultural use of the land, continued ranching and farming are permitted, and some very limited development may be allowed.

For example, an easement generally permits the construction of new farm buildings and can allow construction of a carefully located home for family members or the subdivision of a lot for resale. 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



## Federal 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 2,000 acres is worth:

\$8,000,000

The value of the ranch with an easement is:

\$4,000,000

To calculate the total taxable estate, his family would subtract the following from the \$4,000,000:

\$2,000,000 (standard exclusion under federal estate tax law as of 2007) and  
\$500,000 (the easement's 2031c estate tax exemption)

The total taxable estate value would then be:

\$1,500,000 (vs. \$6,000,000 w/o an easement)

Taxed at 35%, the family would be responsible for estate taxes totaling:

\$525,000 (vs. \$2,100,000 w/o easement)

The family could then choose to use the Colorado conservation easement tax credits:

\$375,000 in Year 1  
+\$375,000 in Year 2  
\$750,000 (total tax credits)

If the credits were brokered at 80%, the family would receive a cash return of:

\$600,000

This would enable the family to pay for the estate taxes with the proceeds from the Colorado Tax credits.

*\*Example only—please consult your legal and financial advisors.*

*For more information contact us at:*

8833 Ralston Road, Arvada, Colorado 80002

Phone: (303) 225-8677

Fax: (303) 431-6446

E-mail: [info@ccalt.org](mailto:info@ccalt.org)

Colorado Cattlemen's  
Agricultural Land Trust

