



2015 Landowner Information Packet

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What is a Conservation Easement?

A conservation easement is a voluntary permanent restriction that defines the amount or type of development that can take place on a property, with the distinct purpose of protecting and conserving the land for present and future generations. The conservation easement serves as a legal tool to help private landowners protect working ranches, farms, forests, wildlife habitat, water rights, scenic and historic properties and/or structures from the pressures of future development, while at the same time providing tax benefits to landowners choosing to provide this important legacy. In essence, a landowner relinquishes some of a property's development rights, thereby ensuring that the property is forever protected in the manner intended by the landowner. In doing so, the landowner entrusts a land trust with the responsibility of stewarding the conservation easement, in perpetuity. The land trust retains no right to use, sell or transfer the development rights. Instead, the land trust is simply given the right to enforce the restrictions on the property and to ensure that activities carried out on the land are compatible with the conservation values set forth in the conservation easement. The property remains in private ownership and can be sold, leased, mortgaged or transferred, but the conservation easement restrictions remain with the land and apply to all future landowners. The conveyance of a conservation easement (by donation or sale) is a voluntary action on the part of the landowner.

The rights of landownership can be imagined as a bundle of sticks. Each stick represents an ownership right, such as development (residential housing, commercial buildings, etc.), ranching, farming, forestry, mining and recreation. A conservation easement removes one or more sticks from the ownership bundle, for example development and mining rights. However, title ownership and all remaining property rights – the rest of the “bundle” – remain with the landowner.

Conservation easements vary widely and are drafted to meet the needs of all parties, especially the desires of the granting landowner. For example, an agreement to protect a rare wildlife habitat might prohibit any and all development, while a conservation easement on a farm encourages continued farming but limited development, such as the building of additional residences. A conservation easement also may be limited to just a portion of the property, and does not require public access. Each conservation easement is tailored to best fit the landowner's needs and wishes to protect the property. San Isabel believes that landowners are the best stewards of the land.



History of Conservation Easements in the United States

Conservation easements have existed in the United States for over a century. The first conservation easement was written in the late 1880s to protect parkways in the Boston area. The Uniform Conservation Easement Act of 1981 (U. S. Code Title 26 § 170(h)) provided the necessary legal framework for land trusts and federal agencies to increase the utilization of conservation easements as a form of land protection. The Colorado legislature enacted a similar Conservation Easement Act in 1976, and revised the law in 2003 (CRS § 38-30.5-102).

The land trust movement in the United States has steadily grown since 1950, with significantly increased growth since the late 1980s. Land Trust expansion has been attributed to several reasons, including the passage of the Uniform Conservation Easement Act in 1981, rising land values coupled with an increased demand for land during the 1980s, increasing pressure to sell agricultural water to industry, and growing estate tax problems. Currently, there are more than 1,700 legally incorporated land trusts in the United States, including about 30 in the state of Colorado, providing permanent protection to over 37 million acres.

Conservation Values

Conservation easements provide a legal mechanism for landowners to ensure the protection of specified conservation values *in perpetuity*. Numerous federal and state policies and tax codes perceive the donation of a conservation easement as giving away something of monetary value, while protecting a significant public conservation value. The federal tax code requires that a potential property meet at least one of several “conservation purposes” tests. The “tests” are divided into five resource categories, known as the “conservation values”, including:

- (1) Public recreation and/or education;
- (2) Significant natural habitat;
- (3) The protection of open space for scenic enjoyment;
- (4) Open space pursuant to government policy, including farmland and forestland; and
- (5) Historic preservation (U.S. Code Title 26 §170(h)).

Monetary Value of a Conservation Easement

The monetary value of a conservation easement is defined as the difference between the value of the property without restrictions (as it is now), minus the value of the property restricted by a conservation easement. In other words, the value of the conservation easement is the value of the property rights that are given up by the landowner (subdivision rights, development rights, mineral extraction rights, etc.). The value of a conservation easement can only be determined by a licensed and qualified real estate appraiser.



Landowner Incentives

Landowners donate conservation easements for numerous reasons, the most important being the desire to see their land protected forever. However, tax benefits are also a strong incentive. Many federal, state and local laws recognize that conservation easements represent a legitimate public value. By donating a conservation easement, the landowner may receive a tax deduction or other tax benefits in return for providing this important public service.

Note: San Isabel Land Protection Trust does not give legal or tax advice, and nothing contained herein is intended to constitute such advice. Please consult with qualified legal and financial advisors when considering the donation of a conservation easement.

Three types of tax incentives are available upon the donation of a conservation easement:

- (1) Colorado state income tax credit;
- (2) Federal income tax deductions;
- (3) Potential estate tax reductions

Colorado's conservation easement tax credit is one of the most generous in the country. It is also transferable, allowing landowners to receive cash in exchange for development rights on their property, even if their tax liability is not sufficient to use the tax incentives themselves.

To qualify as a charitable donation, a conservation agreement must be permanent, protect important conservation values, and meet certain tax code requirements. In addition, a conservation donation requires not only a willing donor, but a qualified conservation organization, such as San Isabel Land Protection Trust ("San Isabel"), to accept the donation. That organization needs to be able to show that the donation closely fits its particular charitable mission. A land trust will not accept a donation that does not fit its mission and purposes.

1. Colorado State Income Tax Credit

The donation of a conservation easement qualifies Colorado taxpayers for a Colorado Income Tax Credit. Colorado law (Senate Bill 206) allows for a portion of the fair market value of the conservation easement to be claimed as a state tax credit, including 75% of the first \$100,000, and 50% for every dollar of donation above \$100,000, up to an annual limit of \$1,500,000.

Many donors do not have sufficient income to fully utilize their state income tax credits. However, Colorado law permits the sale of credits from a qualifying donor to a qualifying buyer. The donor (seller) will receive approximately 80% - 83% of the value of the tax credit in cash; the tax credit broker receives 5 to 10% as commission; and the buyer receives the remaining 10 to 15% as a reduction in their state taxes.

Example

Mr. and Mrs. Landowner donate a conservation easement to a land trust. The easement is valued at \$500,000 by a qualified appraiser. Based on the formula described above, the Landowners qualify for a state tax credit worth \$275,000. The Landowners do not have sufficient annual



income to use the credit, so they sell it through a broker for 83% of the value (\$228,250). Therefore, the Landowners have earned \$228,250 in cash, by donating a conservation easement and selling their Colorado State Tax Credits.

2. *Federal Income Tax Deduction*

The federal government also provides significant incentives for donating a conservation easement, which include:

- Federal income tax deduction of up to 30% of adjusted gross income in any year (expected to revert to 50% with pending legislation)
- Donors to carry over deductions for their contribution for up to 6 years (expected to revert to 16 years with pending legislation)
- With pending legislation, qualifying farmers and ranchers would be able to deduct up to 100% of their adjusted gross income (must make at least 50% of income from farming or ranching activities).

3. *Estate Tax*

A voluntary conservation easement can be an effective way to reduce tax liabilities while at the same time keep the land intact when land transfers to heirs. By limiting the land's development potential, the agreement lowers its market value, which in turn lowers estate tax liability. Whether the conservation easement is donated during life or by will, it can make a critical difference in the heirs' ability to keep the land whole and in the family. Section 2031(c) of the Internal Revenue Code allows exclusion of up to 40% of the value of a conservation easement property from the estate value calculation, taking into account the reduction in value resulting from the conservation easement. The maximum amount that may be excluded under this provision is \$500,000 per estate.

These tax incentives for the donation of a conservation easement may or may not be applicable to any given situation. Always consult with a tax or financial professional.



Steps to Preserving Land with a Conservation Easement

Conservation easements are important for several reasons, including:

- Provide permanent protection of land and water desired by the landowner
- Protected property remains in private ownership
- Conservation easement agreements are customized and tailored to the circumstances of a given property
- Significant tax and other financial benefits may be realized with the donation of a conservation easement

Before the process of preserving land with a conservation easement may begin, you need to contemplate exactly what it is that you wish to accomplish. There are several reasons that a landowner may consider a conservation easement. Most often, the desire to permanently protect special property aspects, such as the natural, agricultural, open space or historic resources, forms the basis of the landowner's interests. In many cases, the landowner also wishes to preserve his or her family's ability to continue the ownership of the ranch. Therefore, a conservation easement can be an important part of the ranch estate planning.

The process of placing a conservation easement on your land includes several steps. The estimated costs are indicated in italics. However, because each conservation easement is unique, these figures can vary greatly.

1. Talk with a qualified conservation organization.

It is important to select an organization whose goals are compatible with the landowner's goals. Each land conservation organization has specific land selection criteria that they use to evaluate a potential conservation easement. Due to the tax implications, only organizations with a land conservation purpose, such as a land trust, are eligible to hold a conservation easement. A land trust has the responsibility to prevent violations of the terms of the conservation easement, and must conduct an annual site visit of the property ("monitoring") to fulfill the responsibilities of their stewardship. Always choose a land trust accredited by the Land Trust Alliance. Initial consultation time and conservation planning with San Isabel is free. If you choose to pursue a project with San Isabel, submit the letter of intent found in the landowner application along with a \$1,500 retainer fee. Please refer to San Isabel's schedule of costs for additional information about fees.

2. Talk with an attorney and tax advisor.

A conservation easement is a legally binding agreement that restricts the use of your land and water, forever. It is important that the conservation easement is structured to preserve exactly what you want to protect and how you want to protect it. You'll also want to ensure that the conservation easement is structured to maximize the tax benefits for you and your heirs. Legal and financial advisors are immensely helpful to achieving these goals.

3. Determine the conservation values you want to protect on your land.



To qualify for federal and state tax benefits, a conservation easement must protect qualified conservation values as defined in IRS Code Section 170(h) and San Isabel Land Protection Trust, such as: protecting ranch, farm and forest land; protecting scenic beauty; protecting natural habitats; preserving historically important lands or structures; and preserving land for public recreation or education. San Isabel will work with you to determine the conservation values of your property.

4. Drafting the Deed of Conservation Easement

A conservation easement is a legal document that is drafted with the appropriate language to make it valid, enforceable, and tax-deductible. The document is drafted collaboratively and is unique to your property and your wishes. San Isabel will provide you with a model easement document to be adapted to the specific property, thereby saving considerable time and legal expense. Your legal representative should carefully review the document before it is recorded.

5. Obtain required documentation: *Title documents, mineral reports, and mortgage subordinations*

The land trust needs to document that the landowner donating the easement is the legal owner of the land, and that there are no liens or mortgages, or mineral rights issues. If there is a mortgage, then a mortgage subordination will be required from your lender. The land trust will require title insurance for a minimum of \$10,000. If the mineral rights have been separated from the property, then the owner will be required to contract a qualified geologist to determine the possibility of commercial minerals on the property, generating a “Mineral Remoteness Letter or Report.”

6. Obtain a Baseline Inventory Report.

The purpose of a baseline report is to provide documentation on the condition of the property at the time the conservation easement is donated. This documentation is required by the IRS and is used as a benchmark by the land trust for ongoing stewardship responsibilities. The inventory will include the legal description, photographs, maps, man-made features, and legal condition. It will also have data to support the claimed conservation values, such as agricultural features, water sources and rights, ecological features, scenic features, and historic resources. San Isabel is able produce the baseline report, thus ensuring its quality and timeliness. San Isabel is able to provide examples for your review prior to obtaining our services to prepare a baseline report or we can also refer you to other professionals. The costs to prepare a baseline report depend upon the size of the property and the complexities of the conservation easement.

7. Obtain a Qualified Appraisal

It is the landowner's responsibility to obtain an honest and accurate appraisal if tax benefits are desired. The appraiser must follow the Uniform Standards of Professional Appraisal Practice (USPAP) Guidelines to complete a qualified appraisal for any donation. Not all appraisers are qualified to appraise conservation easements. The effective appraisal date must be no earlier



than 60 days before the recording date of the conservation easement. Although the appraisal can be completed after the recording of the conservation easement, up until the tax return due date of the following year (usually April 15), San Isabel strongly encourages landowners who intend to seek tax benefits to have a completed appraisal before recording a conservation easement. A short list of qualified appraisers is included in this document. The costs of an appraisal depend upon the size of the property and the complexities of the conservation easement. An appraisal may not be necessary if the landowner does not plan to utilize the income tax benefits.

8. Transferring Tax Credits.

If you plan to sell your Colorado State Tax Credits, you are responsible for contacting a qualified tax credit broker (see the attached list of Professional references) and for providing all of the required documentation to complete the transaction. In 2015, the Colorado Division of Real Estate requires a Tax Credit Certificate fee of \$8,300 for each conservation easement in which the landowner applies for state tax credits.

9. Record the Deed of Conservation

Conservation easement documents must be recorded in the office of the clerk and recorder of the county in which the property is located.

10. Stewardship Fund Fee

In accepting a conservation easement, San Isabel assumes the legal obligation to carry out the donor's desires by upholding the terms and wishes of your conservation easement – forever. It is critical that San Isabel has sufficient resources to support the stewardship, monitoring, and when necessary, defense of each conservation easement. The Stewardship Fund has been established for these purposes. It enables San Isabel to make annual visits to each property, to maintain relationships with landowners, to educate and engage with new landowners as properties transfer ownership, and to assist landowners in interpreting the conservation easement and exercising reserved rights. Most important, as the endowment builds, it will ensure our ability to take whatever actions are necessary to uphold the terms of your conservation easement. San Isabel will calculate the stewardship fund fee following a formula that considers the size, location and complexity of the property. The fee will be higher for conservation easements that permit a division or split.

Costs

Every conservation easement is unique. Depending upon the size and complexity of your property, the total cost of completing the donation of the conservation easement varies. Please refer to our schedule of fees for more information regarding costs associated with donating a conservation easement.



Checklist for Donating a Conservation Easement

1. ___ San Isabel will begin the conservation easement process when the landowner returns a signed Letter of Intent to donate a conservation easement, along with a non-refundable retainer fee (if San Isabel chooses not to pursue the project, the fee will be returned)
2. ___ San Isabel personnel will visit the property and determine conservation values prior to approving the property for acceptance as a conservation easement.
3. ___ Landowner will provide a new title commitment.
4. ___ Landowner should contract an attorney and accountant to assist with all of the legal and financial implications and the documents required for a conservation easement.
5. ___ Landowner will provide the following:
 - a. ___ A legal description of all property owned by landowner, including parcels that will not be part of the conservation easement.
 - b. ___ Baseline Inventory Report prepared by a qualified land management professional, completed prior to recording the conservation easement. San Isabel can produce this report for an additional fee.
 - c. ___ If the property is mortgaged, a legally sufficient subordination of the mortgage to the conservation easement.
 - d. ___ Appraisal prepared by a qualified appraiser showing the difference between the value of the property before and after the conservation easement.
 - e. ___ If it is determined that the mineral rights have been separated from the property, landowner must contract a qualified geologist to provide a “Mineral Remoteness Letter” showing that the probability of any surface mining on the property is so remote as to be negligible.
6. ___ If a Colorado State tax credit is to be sold, landowner must contact a tax credit broker and provide required and timely information to assure the sale of the tax credit.
7. ___ Draft the Deed of Conservation Easement. San Isabel will provide the landowner with a model deed of conservation easement and the two parties, with the assistance of attorneys, will craft the document to meet the needs of the landowner and San Isabel.



Professional Resources

Conservation Easement Appraisers

Mark Weston
Hunsperger & Weston, Ltd.
5889 S. Greenwood Plaza Blvd.
Suite 404
Greenwood Village, CO 80111
Phone: 303-741-5918
Email: info@hwltld.net

Kevin Shea
Shea Appraisal Company LLC
7057 Parfet Street
Arvada CO 80004
Phone: 303-424-1616
Email: sheakd@comcast.net

Felice Entratter
Butler Burgher Group
9233 Park Meadows Drive, Suite 226
Lone Tree, CO 80124
Phone: 720-344-8240
Email: fentratter@bbgres.com

Bill Park
Park & Associates, Inc.
4575 Hilton Parkway STE 102
Colorado Springs, Co 80907
Phone: 719-534-9497
Email: bill@parkandassociatesinc.com

Conservation Easement Attorneys

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Flynn Wright & Fredman, LLC
Colorado Springs, CO 80901
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Email: info@fwflegal.com

Bill Silberstein
Kaplan Kirsch Rockwell
1675 Broadway, Suite 2300
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bsilberstein@kaplankirsch.com

Thomas Fellows
Fellows Real Estate Consultants, Inc.
PO Box 38820
Colorado Springs, CO 80937
Phone: 719- 473-9132
Email: frec@tlfels.net

Peter Sartucci
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Phone: 303-664-5080
Email: PSartucci@aol.com

Steven Groh
Conservation Values
PO Box 146
Timnath, CO 80547
Phone: 970-674-9220

Greg Powell
Powell & Murphy, P.C.
417 W. 1st St.
P.O. Box 1380
Salida, CO 81201
Phone: 719-539-8604
Email: gregpowell@qwestoffice.net

Kent Holsinger
1800 Glenarm Place, Suite 500
Denver, CO 80202
Phone: 303-722-2828
Email: kholsinger@holsingerlaw.com



Dave Conley
David C. Conley P.C.
24 South Weber St, Suite 300
Colorado Springs, CO 80903
(719) 633-3334

Colorado State Tax Credit Brokers

Ariel Steele
Tax Credit Connection, Inc.
2919 W. 17th Ave, Suite 201
Longmont, CO 80503
Phone: 303-774-8195
Email: ariel@taxcreditconnection.com
www.taxcreditconnection.com

Carl Spina
Conservation Tax Credit Transfer, LLC.
274 Union Blvd
Lakewood, CO 80228
Phone: 970-612-0696
Email: carl@taxtransfer.net
www.taxtransfer.net

Mike Strugar
Conservation Resource Center
820 Pearl Street
Suite F
Boulder, CO 80302
Phone: 303-544-1044
Email: info@taxcreditexchange.com
www.taxcreditexchange.com

Marty Zeller
Colorado Conservation Connection
1410 Grant Street, Suite C-306
Denver, CO 80203
Phone: 303-831-7498
Email:
mail@coloradoconservationconnection.com

Geologists (required for property owners that do not own their mineral rights)

Scott Pieratt
Altus Environmental, LLC
2648 Santa Fe Drive, Suite #14
Pueblo, CO 81006
Phone: 719-423-7130
Email: spieratt@altusenviro.com

Donald Graham
Headwaters Explorations
37508 Shavano Dr., #A-4
Gunnison, Colorado 81230
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Email: doncgraham@roadrunner.com

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