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Conservation Easements: An Introductory Review for Wyoming

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What are conservation easements?

Conservation easements are voluntary agreements that protect resources by limiting future development of land. Conservation easements can be used to ensure continued agricultural production of land or to protect wildlife habitat and natural areas, historic structures, or open spaces and views. In the rural West, including Wyoming, the purpose of many conservation easements is to protect the land's agricultural use and open space.

Land ownership can be described as a bundle of rights, such as the right to harvest crops or timber, to construct buildings, to limit access, or to subdivide the land. A landowner may sell or donate the whole bundle of rights or just one or two of those rights. By selling or donating a conservation easement, a landowner exchanges certain rights for cash or tax benefits for the purpose of protecting the land. A landowner retains all other rights, however, and the traditional uses of the land are typically not affected (Table 1).

Table 1. Effects of conservation easements on a landowner.

	Without conservation easement	With conservation easement
Remains eligible for state or federal farm programs	Yes	Yes
Can use land as collateral for loans	Yes	Yes
Can pass the land to heirs	Yes	Yes
Can sell the land	Yes	Yes
Can reserve home lots for children	Yes	Yes
Is subject to local property taxes	Yes	Yes
Can develop residential or commercial subdivisions	Yes	Typically No

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Each conservation easement is different but general examples of activities that may be restricted include subdivision of the land, residential or commercial development, and non-agricultural commercial activities. All restrictions are voluntarily agreed upon by the landowner and the organization that will hold the easement.

Conservation easements are flexible tools designed specifically to meet the needs of the parties involved while protecting important conservation values of the land. They may cover an entire parcel or appropriate portions of the property. Land under a conservation easement is usually not open to public access, but the easement contract usually grants the easement-holding organization access to the land to monitor the terms of the easement (typically once a year).

Valuing a conservation easement

As a general rule, the fair market value of a perpetual conservation easement is equal to the difference between the fair market value of the land without the easement in place and the fair market value of the land as restricted by the easement. For example, if a property is appraised at \$1,000,000 without the easement and \$600,000 with the easement in place, the value of the easement (that is, the rights given up) is \$400,000. Usually the more restrictive an easement is, the higher its monetary value. If an easement is placed on just a portion of the property, the easement's value is the difference in the appraised value of the entire parcel before and after the easement is placed on part of it.

Potential income tax benefits

Landowners who donate a conservation easement may qualify for charitable contribution deductions on their federal income tax if the easement meets the following general requirements:

1. It must be perpetual in duration.
2. It must be granted to a qualified organization.
3. It must serve at least one of the following conservation purposes:
 - a. Preservation of open space (including farm land, ranch land, and forest land) for the scenic enjoyment of the general public or for significant public benefit pursuant to clearly delineated local, state, or federal government policy;
 - b. Preservation of land areas for public outdoor recreation or education;
 - c. Protection of relatively natural habitat for fish, wildlife, plants, or similar ecosystems; and
 - d. Preservation of historically important lands or structures.
4. It must prohibit all surface mining. If an easement donor does not own all the mineral rights, the possibility of surface mining must be determined "so remote as to be negligible."

The donation of a properly structured conservation easement should result in a charitable deduction for the donor. For federal income tax purposes a donor can generally deduct the fair market value of an easement from his or her taxable income up to a maximum of 30% of adjusted gross income for the tax year. Any value that cannot be deducted in the year of the gift can be carried over for up to five succeeding tax years.

Landowners seeking monetary compensation for a conservation easement may be able to sell an easement, often through a "bargain sale" transaction in which the easement is sold for less than its appraised market value. The difference between an easement's appraised fair market value and the sale price is a tax-deductible

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charitable gift for the landowner. Such an easement purchase is more affordable to a buyer.

Funding for purchasing and administering easements may come from federal, state, local, and private sources. Examples of these funding sources include the Forest Legacy Program (located within the U.S. Department of Agriculture), Great Outdoors Colorado (a state lottery method of funding), local and state bond initiatives, philanthropic foundations, and private donors.

Potential estate tax benefits

A conservation easement meeting the requirements for deductibility described above can also provide significant relief from federal estate taxes. The value of an easement at the date of a landowner's death is removed from an estate. In addition, most estates holding land subject to a conservation easement will be able to exclude 40% of the restricted value of the land under easement up to \$500,000 (or \$1,000,000 for husband and wife). For example, if land is worth \$2,000,000 before the donation of an easement and \$1,000,000 afterward, the value included in the estate would only be \$600,000. This is because the \$1,000,000 value of the easement would be removed from the estate at the date of death, and 40% of the remaining value ($\$1,000,000 \times 40\% = \$400,000$) might be excluded as well, leaving \$600,000.

Non-perpetual (term) easements

Conservation easements are usually granted in perpetuity, but they can be limited to a specific period of time, or term. Term easements, however, do not qualify for any of the potential federal income and estate tax benefits discussed above. Moreover, because term easements do not offer permanent protection of the land, most organizations or land trusts are reluctant to enter into such arrangements. Raising funds to purchase a term easement is impractical.

Amendments to easements

Easements can be amended in certain circumstances, such as to clarify or correct errors in an original document, add land to an easement, adjust boundaries, or modify restrictions to an easement. Easement amendments cannot result in monetary gain for a landowner, a decrease in the appraised value of an easement, or any harmful effect on the conservation purposes for which an easement was originally given. Income and estate tax laws related to conservation easements must be considered when determining whether and how an easement can be amended.

Escrowed commitments

With escrowed commitments, landowners tentatively commit to donate or sell conservation easements, but plans are not finalized until neighboring landowners also commit. Development rights are not transferred to a land trust or other organization unless all landowners commit to the terms of the easements. While this process can be complicated, it enables protection of large areas of land rather than single tracts of land that might end up surrounded by development. Unless properly structured, however, escrow arrangements may prevent parties to an agreement from obtaining federal tax benefits.

State conservation easement laws

In 1981 the Uniform Conservation Easement Act was adopted by the National Conference of Commissioners on Uniform State Laws to serve as model legislation for allowing qualified public agencies and private organizations to accept, acquire, and hold interests in land for conservation purposes. The model act facilitates the creation and management of conservation easements.

As of 2002, forty-seven states had adopted the Uniform Conservation Easement Act or a similar act relating to conservation easements. The

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remaining states without an easement act are Wyoming, Pennsylvania, and North Dakota. The Uniform Conservation Easement Act has been proposed in the Wyoming legislature but has not been passed, and Wyoming continues to operate under common law for conservation easements. Hundreds of conservation easements, dating back more than 25 years, have been successfully conveyed in Wyoming under common law provisions. Wyoming landowners who are considering donating or selling a conservation easement should consult with an attorney about the common law requirements.

Land trusts and other organizations that can hold conservation easements

Conservation easements can either be donated or sold to land trusts or other non-profit organizations or to local, state, or federal government entities. Land trusts are private, non-profit, charitable organizations. They use a variety of tools to protect land, including the acquisition of conservation easements, deed restrictions and fee titles to land, development of management agreements, and estate planning. For conservation easements, land trusts provide managerial support and expertise and are responsible for ensuring that easement terms are carried out for the duration of an easement.

Every land trust has its own mission and strategy for land protection. Priorities of land trusts vary among agriculture, wildlife habitat, river corridors, community separators, and greenway purposes, although many land trusts enter into agreements for more than one primary purpose. A landowner can choose a land trust or other organization whose mission best coincides with his or her own desires.

Land trusts are not new to the United States. While most have originated since the 1950s, a few have already celebrated their centennials. There are more than 1,200 local and regional land trusts nationwide that have protected more than 6.2

million acres of land, primarily by acquiring land and conservation easements. Several land trusts currently operate in Wyoming, including Green River Valley Land Trust, Jackson Hole Land Trust, The Nature Conservancy, and Wyoming Stock Growers Agricultural Land Trust.

Some local, state, and federal governmental entities can also receive or purchase conservation easements. For example, the Wyoming Department of Game and Fish, the National Park Service, the U.S. Forest Service, and the U.S. Department of Agriculture's Natural Resources Conservation Service have participated in conservation easement programs in the past. Teton County, Wyoming, holds conservation easements on a number of properties in the county.

Landowners are often concerned about the fate of an easement if an organization holding an easement fails to exist in the future. Federal law requires that for an easement to be tax deductible it must provide for the assignment of the easement in the event that the original holder can no longer hold the easement. There is no requirement that the easement be assigned to a governmental agency, however. The grantor of the easement may specifically provide that the easement only be assigned to a private, non-profit organization. In many cases, the easement may provide that the grantor or current owner of the land be consulted before any assignment can take place.

Private, non-profit organizations that hold easements are not required to be environmental organizations. The only requirements in the federal tax code are that a private organization be recognized as a public charity under Section 501 (c) (3) of the Internal Revenue Code, have permanent protection of land on which it holds an easement as at least one of its purposes, and be capable of enforcing the terms of an easement. Thus, a number of ranching and agricultural organizations around the nation hold conservation easements, including the Wyoming Stock Growers Agricultural Land Trust.

Considerations for landowners interested in conservation easements

A good knowledge base and experience with land are needed prior to entering into a conservation easement to appropriately predict future needs. Future uses of land such as home building for family members, salvaging dead timber, and important mineral interests or values must be carefully examined. Landowners should consider whether other tools such as estate planning could accomplish their goals.

Because a conservation easement represents a restriction on use of land, landowners should carefully consider whether an easement is appropriate for them and then exactly what an easement should provide in terms of permitted and prohibited uses. Once these decisions are made (typically in consultation with a landowner's professional advisors and with the prospective easement-holding organization), drafting, executing, and recording an easement can be completed in a reasonably short period of time. Landowners contemplating a conservation easement should consider professional assistance from knowledgeable attorneys, appraisers, and others prior to finalizing an easement to ensure that their interests are sufficiently protected in the transaction.

Common questions about conservation easements

- Question: How rigid are conservation easements in restricting all present and future uses of land?
Conservation easements are actually flexible and can be designed to meet the needs of a landowner as long as they also protect resources that benefit the public. The terms of each easement are negotiated between a landowner and an organization holding the easement. In addition, conservation easements can be amended under certain circumstances.
- Question: Do conservation easements channel private lands toward government ownership?

A landowner can specify in an easement contract that the easement be passed to another private land trust if the original land trust can no longer hold the easement and can also expressly prohibit transfer of the easement to government ownership. Governmental entities could, however, gain control of land under a conservation easement through condemnation, just as in the case of governmental acquisition of any other private property interest.

- Question: Are landowners subject to the will of a land trust?

No. Conservation easements are voluntary agreements between a landowner and a land trust. Both parties must comply with the terms of a conservation easement as agreed upon by the parties.

- Question: Do conservation easements remove land from tax rolls?

No. Land with a conservation easement is not removed from tax rolls. Although conservation easements generally decrease the development value of property, land remains subject to county property taxes. In many cases, land subject to a conservation easement is already receiving a reduced assessment due to its agricultural use.

- Question: Do conservation easements prohibit any kind of future development?

The type of development that is allowed on land subject to a conservation easement depends on the agreement creating the easement and the values the easement is designed to protect. Such agreements often permit development for agricultural purposes and for the personal residence of a landowner and his or her children or heirs.

- Question: Is land under a conservation easement subject to access by a land trust and by the public?

Whether access by the public or a land trust is granted depends on the terms of an easement as agreed upon by a land trust and a landowner. Most conservation easements do not grant public access, but the land trust holding an easement is generally granted periodic access, typically once per year, to carry out its responsibilities for

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ensuring that the easement terms are followed. There is no requirement that the public have any physical access to or across easement property.

- Question: Can land with a conservation easement be sold, passed as part of an estate, or used as collateral for loans?
Yes. Land under a conservation easement can be sold and passed as part of an estate. It can also be used as collateral for loans, although an easement may decrease the amount of collateral because it generally removes much of the development value of land.
- Question: Do all conservation easements cover an entire parcel and last forever?
No. Conservation easements can be designed to cover any amount of property for any duration, depending on the needs of a landowner and a land trust and the conservation values to be protected. A landowner could grant an easement for a specified number of years if a land trust agrees to accept it. Non-perpetual ease-

ments, however, do not qualify for federal income or estate tax benefits.

- Question: Do conservation easements prohibit traditional and agricultural uses of land?
No. Conservation easements typically allow agricultural and other traditional uses of land (including hunting and fishing) and generally limit or prohibit most commercial and residential development. The activities prohibited by an easement are only those that are voluntarily agreed to by a landowner and a land trust.

Information in this publication is subject to interpretation as rules governing new laws are put into effect. It is not intended as legal advice; please consult an attorney for specific legal assistance.

Additional publications in this series include:

- B-1121 *Population Change in Wyoming, 1990-2000*
- B-1120 *Second Home Growth in Wyoming, 1990-2000*
- B-1133 *Cost of Community Services for Rural Residential Development in Wyoming.*

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