



CONSERVATION EASEMENTS: CAN IT WORK FOR YOU?

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Speaker:

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Texas and Southwest Cattle Raisers Association

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Conservation Easements: Can It Work For You?

1. Title for this Session might suggest there is one answer to the question.
 - a. But the question is a very personal one for any landowner.
 - b. And the answer is not the same for everyone.
 - c. A decision to do a conservation easement is very permanent and requires appropriate due diligence and analysis.
 - d. But prudent business planning suggests that the benefits and restrictions of a conservation easement should be understood by landowners as they consider long term planning issues for a ranch.

2. Goals of this session
 - a. Provide some basic information regarding the requirements for a conservation easement.
 - b. Discuss the tax benefits for the donation of a conservation easement.
 - c. Provide some information from other states where significant conservation is occurring on ranchlands.
 - d. Suggest several next steps for someone with an interest in finding out more about conservation easements, or with a desire to understand them better.

3. Requirements for a conservation easement to qualify for federal tax benefits.
 - a. A conservation easement is a recorded restriction on real property that limits development and preserves the scenic, agricultural, and wildlife values of a property.
 - b. The conservation easement does not have to freeze the condition of the property at a moment in time, and some limited reserve rights, such as the right to build additional agricultural structures and the right to construct a small number of additional residences, can be permitted.
 - c. Hunting, fishing, wildlife viewing, and other activities that are consistent with the conservation values are typically permitted.
 - d. The property must have conservation values that benefit the public and satisfy the Treasury Regulations. The four types of conservation values identified in the Treasury Regulations are
 - i. Public recreation.
 - ii. Wildlife habitat.
 - iii. Open space (including farmland) for the scenic enjoyment of the public.
 - iv. Historic structure or area.
 - e. The conservation easement must be donated to one of the following type of entities:
 - i. A 501(c)(3) charitable conservation organization (typically a land trust).
 - ii. A governmental entity.
 - f. The conservation easement must be perpetual.
 - g. A baseline report must be prepared documenting the condition of the property at the time of the conveyance.

- h. If mineral rights have been severed from the surface ownership, a mineral report is required. Depending on how it is done, some oil and gas exploration can be consistent with the protection of the conservation values.
- i. Any mortgages must be subordinated to the terms of the conservation easement.
- j. A management plan is not required by the Treasury Regulations, but may be required if the conservation easement is being purchased. Management plans range from very detailed to very innocuous. Unless specifically agreed to by the landowner and included in the terms of the conservation easement, the holder of the conservation easement does not have the right to direct how the property is managed on a day to day basis.
- k. Public access is not required.

4. Federal Tax Benefits.

- a. The donation of a conservation easement generates a federal charitable deduction equal to the value of the donation.
- b. Notwithstanding the general limitation that charitable deductions can only be used to offset 30% of adjusted gross income and only carried forward for 5 years, a taxpayer may offset up to 50% of their adjusted gross income for a conservation easement and carry forward the deduction for up to 15 years, and it rises to 100% of their adjusted gross income if the individual is a qualified farmer or rancher who receives more than 50% of their gross income from the business of farming.

- c. These additional benefits currently expire at the end of 2013, but they have been in place since 2006 and have been renewed by Congress each time they have expired.
- d. During the first year of ownership, the donation is limited to the basis in the property.
- e. It is possible to “phase” the conservation easements, i.e. place a conservation easement on just a portion of an owner’s property, and then do another conservation easement in a subsequent year.
- f. The value of the conservation easement donation is determined by a “before and after” appraisal that determines both the unrestricted fair market value of the property before the conservation easement, and the restricted value of the property after the placement of the conservation. The difference between the before and the after value is the value of the conservation easement.
- g. Some governmental entities purchase conservation easements from landowners. In Colorado it occurs at the state and county level. At the federal level, the Grassland Reserve Program and the Farm and Ranchland Protection Program purchase conservation easements. Typically those purchases are not for the full value of the conservation easement, and the difference between the full value of the conservation easement and the purchase amount is deductible as a charitable gift. This type of transaction is usually referred to as a “bargain sale”.
- h. The benefit of a conservation easement for estate tax purposes is that a conservation easement that qualifies under the

Treasury Regulations will reduce the value of the property for estate tax purposes.

- i. An additional estate tax benefit is that an estate can exclude from the value of the estate up to 40% of the value of land subject to a qualified conservation easement, up to a maximum of \$500,000.

5. The Landscape of Western Agricultural Land Trusts

- a. In 1995 the Colorado Cattlemen's Association created the Colorado Cattlemen's Agricultural Land Trust. It now holds over 275 conservation easements on over 400,000 acres of land, and has significant credibility with the Colorado agricultural community.
- b. From that example, other state wide producer organizations in Texas, Kansas, Wyoming, California, and Oregon/Washington created similar land trusts to serve their ranching communities. The Texas organization is the Texas Agricultural Land Trust.
- c. With the Montana Land Reliance, which has a formal working arrangement with a state wide cattle producer's organization in Montana, these entities created the Partnership of Rangeland Trusts. Collectively these seven organizations have completed almost twelve hundred conservation easements on almost two million acres of land.
- d. A common theme of these organizations is that most of the boards have at least a majority of the board appointed by the state wide producer's organization. This means that a landowner is dealing with an organization with a board made up of its peers in the ranching industry.

6. Additional steps

- a. Probably the most important step in considering a conservation easement is to investigate and find a land trust that is a match for the landowner.
- b. That means having a mission consistent with the motivation of the landowner, which could mean an agricultural land trust if motivated by conserving ranchland, or which could mean a national organization if motivated by the protection of an animal or plant species.
- c. That means having a board that the landowner will have a level of comfort with, which could be an agricultural land trust representing the landowner's industry or a local or regional land trust representing the landowner's geographic community.
- d. That means having an organization that a landowner feels confident will deal with them fairly in negotiating the conservation easement and in addressing issues that arise over time under the conservation easement.
- e. The land trust should be used as a resource for the landowner. While not a substitute for the professional advice recommended below, land trust are typically knowledgeable about conservation easement transactions, and should be able to help a landowner.
- f. The landowner should also understand the requirements of the land trust for holding a conservation easement.
- g. This outline covers the highlights of conservation easements. Because conservation easements are perpetual, it is critical to

- get competent professional advice to be sure that the conservation easement is done properly. That means hiring an attorney familiar with conservation easements and an appraiser who has appraised conservation easements.
- h. Many landowners will also need to consult with their accountants to fully understand the economic consequences of doing a conservation easement.
 - i. Finally, a conservation is sometimes done to protect the land for the next generation (although on occasion it is to protect the land *from* the next generation). Therefore the decision to pursue a conservation easement is often a family discussion and decision.

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Notes

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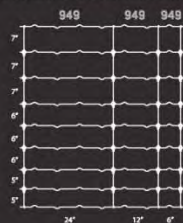
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