

WHAT IS A CONSERVATION EASEMENT?

conservation easements

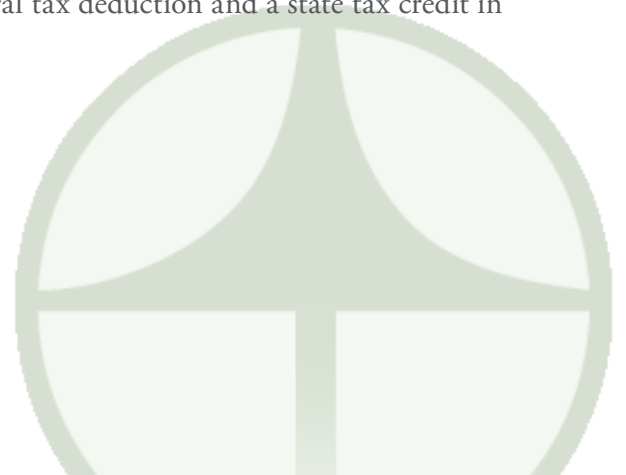
THE BASICS

In use for over 100 years, conservation easements are legal agreements that permanently retire certain development rights of a property, as agreed upon by the property owner and a land trust. Each conservation easement is unique in that it restricts and protects the specific rights and land values that the owner wishes to conserve on a particular piece of property. And yet all conservation easements have one thing in common: they must provide a significant public benefit.

Conservation values may be agricultural, scenic, historic, ecological (wildlife habitat), or recreational, and the public benefits through their protection. This does not mean that the conservation easement must allow for public access—in fact this is one of the biggest misconceptions of easements it simply means that the surrounding community directly benefits by the land being conserved.

For example, if a landowner retires specific building rights and decides not to build houses on a scenic ridge top that is viewed from a major public road, then he or she is preserving a scenic view the public can see and enjoy. By restricting development the landowner preserves the view (a conservation value) and the public benefits from these actions.

Every conservation easement must be recorded with the county clerk and is tied to the land in perpetuity. The easement passes from landowner to landowner in concept since it is forever tied to the land. The land trust “holds” the easement, taking on the responsibility to ensure that the terms of the easement are met and visits the property each year to see that the terms of the easement are being followed. In retiring certain development rights, a landowner is often giving-up a large amount of their land’s value. This value is determined by an appraisal and if the landowner donates the conservation easement to a land trust the value is considered a donation or gift by both the federal and state government, qualifying the landowner for a federal tax deduction and a state tax credit in certain cases.



THE PROCESS

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Placing a conservation easement on a property is a process—similar to carefully purchasing real estate and requires planning and coordination. Generally speaking the process can take from three to nine months to complete; and approximately three months longer if the landowner is applying for state tax credits.

PRE-PROJECT APPROVAL

1) Educate Yourself on Conservation Easements via:

- Read the material in this packet
- Sit down with the Santa Fe Conservation Trust staff
- Talk to landowners who have conservation easements
- Gather information from the internet, including SFCT: sfct.org and the Land Trust Alliance: lta.org

2) Determine if a Conservation Easement Will Meet Your Family’s Personal and Estate Planning Goals

Often the decision of placing a conservation easement on your property is a family matter. Discuss the implications of an easement with the concerned parties and determine if a consensus can be reached. Consult with your financial advisor early and throughout this process to determine the federal and state tax benefits of completing a conservation easement and how that fits in with your estate planning.

3) Determine if Your Project is a Fit for SFCT and Vice Versa

Call SFCT to determine if your property meets our criteria. In some cases a site visit will be necessary. You also need to make sure that this is a good fit for yourself. After a phone call or site visit, SFCT will rank your property and the staff will present it to the Board of Directors. (SFCT may decline to accept any conservation easement or other conveyance at any time, for any reason deemed appropriate by the Board.)

DETERMINE YOUR TITLE AND MINERAL RIGHTS TO SEE IF YOU CAN MOVE FORWARD

1) Title Commitment (and Insurance)

Contact a title company and request a Title Commitment, which will allow you and SFCT to determine if there are any title complications that need to be cleared up. If we complete the project, SFCT requests title insurance in the amount of value of the conservation easement. If you have mortgages on your property, SFCT will require lien holder to subordinate the mortgage to the conservation easement.

2) Mineral Rights Search and Mineral Remoteness Letter

At the same time you request a Title Commitment from a title company, ask the title company to run a Mineral Right search for you.

If you do not own all of your mineral SFCTs you need to contact a qualified geologist to receive a “Mineral Remoteness Letter”. This letter indicates that the owners of the minerals are highly unlikely to mine their assets because the likelihood of mining is “so remote as to be negligible”.

If you cannot obtain a Mineral Remoteness Letter you will have to exclude that portion of your property where the mineral rights are severed, or if the severance encompasses the entire property, SFCT will not be able to complete a conservation easement with you.

COMPLETE YOUR PROJECT

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1) Find an Experienced Attorney

Do not make the mistake of thinking that all attorneys (and financial advisors) know the intricacies of conservation easements. Seek professionals who are knowledgeable about this subject. It will save you time and money.

2) Obtain Due Diligence Documents

The staff at SFCT can provide you with a list of documents that we will need copies of, such as legal descriptions, deeds, surveys, water rights, title insurance etc. to complete the process. It is best to get as much of this done as early in the process as you can because many of the other steps will need this information.

3) Determine Which Activities to Allow and Which to Prohibit on Your Land

Work with the SFCT staff to create a list of permitted activities and restrictions that are often addressed with conservation easements.

4) Obtain a Preliminary Appraisal

Although you will need a full appraisal to complete a conservation easement, you may want to get a preliminary appraisal that will enable you to sit down with your financial advisor. Seek a state certified, experienced appraiser because this transaction will have to stand up to IRS standards and can have dire consequences if it doesn't.

5) Obtain a Baseline Document

Contact a biologist to complete a "Baseline Document" (also called a Present Condition Report). Through narrative, maps and photos the Baseline Document establishes the present condition of the property when the easement is put on it. It is required by the IRS and serves to: 1) demonstrate to the IRS that there are significant Conservation Values on the property, and 2) be the benchmark against which any violations of the terms of the conservation easement are measured.

6) Draft the Conservation Easement Document with Land Trust and Attorney

SFCT has a boilerplate conservation easement document. However, each easement is tailored to the desires of the landowner and the needs of the land. You, your attorney and the staff at SFCT need to work together to create mutually agreeable terms for your conservation easement deed. This deed may need to be passed back and forth several times to produce the final product.

7) Obtain a Complete Appraisal

A complete appraisal is required in any case where tax benefits are sought. The IRS requires that a complete appraisal be filed with any conservation easements valued at \$500,000 or more. It is very important to tell your appraiser that the appraisal must be done within 60 days prior to the donation of the easement.

8) Agree on Final Conservation Easement Document

After all parties (landowner, SFCT and both parties attorneys) agree that the terms written in the conservation easement are acceptable, and all due diligence is complete, the deed is ready for filing.

9) File Conservation Easement Document

The conservation easement document must be filed in the County Clerks office of the county where the land is located.

FILING FOR TAX BENEFITS

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AFTER COMPLETING YOUR PROJECT

1) Consult with Financial Advisor Regarding Filing For Potential Tax Benefits

Complete the process with your financial advisor to file the appropriate forms and financials to receive potential Federal and State tax benefits.

In addition to the steps listed above, some cases may require other steps, such as a survey or an environmental assessment, and the staff at SFCT can provide you with a list of professionals that we have worked with in these fields and guide you through the process and discuss your particular situation.

Disclaimer: While SFCT is pleased to provide landowners with this service, our staff are not attorneys, financial planners and geologists or appraisers. As such, the SFCT staff is not qualified to dispense specific numbers and information regarding these fields of expertise. We urge you to hire experienced consultants to complete your conservation team.