New Mexico Land Conservancy

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Preserving New Mexico's Land Heritage

Preserving Open Space through Voluntary Land Protection Supported by Incentives

City of Las Cruces
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New Mexico Land Conservancy

Statewide Land Trust dedicated to preserving New Mexico's land heritage by protecting significant wildlife habitat, productive agricultural lands, scenic open space, and other important lands and resources for conservation purposes and public benefits

<u>85,000 acres conserved</u>

The Changing West

- 50% of the land in the West is private – much of this is held by farmers and ranchers
- The West is currently undergoing one of the largest turnovers of private land in history
- This turnover will have tremendous implications, for both urban and rural, agricultural communities

Expanding Growth in New Mexico

- New Mexico is one of the top ten fastest growing states in the nation
- Population projected to increase 35% over the next 25 years
- This growth is resulting in the conversion of over 50,000 acres of land each year. One million acres converted between 1982 – 2007.

What is a Land Trust?

- Private, non-profit conservation organization

- Grassroots expression of people's dedication to the protection of land for wildlife, agriculture, water conservation, ecological services, historic preservation, open space, recreation, scenic enjoyment and education

Land Trust Movement in the U.S. and New Mexico

- 1890s – first land trusts emerge in New England
- 1950 – 40 land trusts
- 1975 – 300 land trusts
- 2010 – 1,600 land trusts
- Still relatively new movement in New Mexico – 6 land trusts and several national land conservation organizations

Land Trust Record in U.S. and New Mexico

- National Land Conservation Organizations throughout U.S.
  - 25 million acres conserved
- State-wide and Local Land Trusts throughout U.S.
  - 12 million acres conserved
- New Mexico
  - Over 150,000 acres conserved by NM land trusts
  - Over 1 million acres conserved by national land conservation organizations

What is a Conservation Easement?

- Primary tool used by land trusts and government agencies to protect high-conservation value private land.

- A voluntary, legal agreement between a landowner and a land trust to restrict subdivision and development, and certain uses of the subject land for the purpose of protecting its conservation values and/or providing some public benefit .

Legal Basis

- Tax Reform Act of 1976
- Tax Treatment Extension Act of 1980
- Uniform Conservation Easement Act of 1981
- Taxpayer Relief Act of 1997
- New Mexico Land Use Easement Act
- 2006 Federal Tax Act
- Supported by Section 170(h) IRS Codes

Basic Concepts

- Conservation Values and Public Benefits:
  - Ecological – natural habitat, wildlife, water, other natural resources
  - Scenic, Open Space
  - Agriculture
  - Cultural – cultural and historic sites
  - Recreational – trails, hunting and fishing access

Basic Concepts

- Easements are voluntary and respect private property rights
  - Main goal is to prevent subject land from *ever* getting subdivided and developed - land can still be used for many other compatible uses
  - May or may not provide public access
  - Land stays in private ownership and remains on tax roles
  - Perpetual agreements that run with the land and bind future owners - land can still be sold, leased or passed on to heirs

Basic Concepts

- Conservation easements can be donated or sold by landowners to qualified non-profit land trusts or government agencies
  - Land has certain values that are worthy of conservation and their protection is the main purpose and intent of the easement
  - Tax and financial incentives provide additional motivation and compensation – after all, private landowners are giving up development and other rights on the subject land forever

Basic Concepts

- Value of an easement is determined by a “Before and After” appraisal method:

Example:

$1,000,000 “Before”

- $600,000 “After”

= $400,000 “Conservation Easement Value”

Why Consider a Conservation Easement?

- For Landowners:
  - Prevent subject land from being subdivided and developed
  - Maintain vision for the land and its resource use and long-term stewardship (i.e. keep land in production, keep land in the family)
  - Reduce taxes

Why Consider a Conservation Easement?

- For Municipal and County Governments:
  - Help achieve comprehensive open space goals (trails/public recreational access, preservation of scenic areas and cultural and historic sites, habitat protection, agricultural land preservation.
  - Cheaper than fee acquisition – also long-term maintenance costs are lower since property remains in private ownership
  - Keep subject properties on the tax roles

Donated Conservation Easements

Voluntary donation of a conservation easement in perpetuity to a 501(c)(3) non-profit organization (land trust) or unit of government is considered a charitable, non-cash gift for federal and state tax purposes

Qualifying Criteria for Federal and State Tax Benefits

- Conservation easement must meet IRS "Conservation Purposes" or "Public Benefits Test" by providing and/or protecting <u>at least one</u> of the following:
  - Relatively natural habitat
  - Scenic open space
  - Agricultural land
  - Historic or cultural resources
  - Public recreational or educational opportunities
- Must be granted in perpetuity to qualified conservation organization - land trust or governmental agency

When a Conservation Easement Does Not Qualify for Benefits

- Fails to meet IRS qualifying criteria
- No development potential on subject land due to physical or legal constraints
- Granted in return for something (quid pro quo)
- Existing requirement for open space dedication

Federal Income Tax Deductions for Ordinary Taxpayers

- Individual landowners can deduct up to 50% of Adjusted Gross Income (AGI) on federal income taxes for up to 16 years or until value of donation is used up

- Corporate landowners can deduct up to 50% of federal *taxable* income for up to 16 years or until the value of the donation is used up

Examples

- $500,000 conservation easement donation
- $100,000 AGI
- Deduct $50,000/yr X 10 years = $500,000
- Deduction fully used up with time to spare

- $1 million conservation easement donation
- $100,000 AGI
- Deduct $50,000/yr X 16 years = $800,000
- Only $800,000 of $1 million donation used up

Federal Income Tax Deductions for Agricultural Landowners

For qualifying ranchers and farmers (earning at least half of their income from agriculture):

- Individual landowners can deduct up to 100% of Adjusted Gross Income (AGI) on federal income taxes for year up to 16 years or until value of donation is used up

- Corporate landowners can deduct up to 100% of federal *taxable* income for up to 16 years or until value of donation is used up

Current Window of Opportunity

- Current incentives expire on Dec 31, 2011 - then will have to be renewed by Congress

- If not renewed, the incentives will revert back to old rates:
  - 30% of AGI for individuals
  - 10% of taxable income for corporations
  - 6 year timeframe to use the value of CE donation

New Mexico State Tax Credit

NM Land Conservation Incentives Act:

- Tax credit for 50% of the value of a qualified CE donation up to a maximum of $250,000
- A husband and wife may each claim a credit up to a combined total of $500,000
- The credit can be used to offset state income taxes or sold at a discounted rate (for approximately 80% of its face value) over a 20 year period
- Only one credit can be earned or transferred per year
- Income from the sale of tax credit treated as ordinary income

Federal Estate Tax Benefits

- Exempt estates:

  2007 - $2 million

  2008 - $2 million

  2009 - $3.5 million

  2010 – No estate tax*

* Congress will likely pass new estate tax legislation between 2011 - 2012

Federal Estate Taxes

- Taxpayer Relief Act of 1997
- Up to an *additional* $500,000 may be excluded from value of an estate because of an easement donation
- Up to 40% of easement value

Local Property Taxes

- Typically a conservation easement reduces property taxes to agricultural or open space rates depending on the amount of development rights that are given up through the easement.

- Land already being assessed as “agricultural” will continue to be taxed at that rate.

Potential Sources of Funding for Conservation Easements

- Federal conservation programs:
  - Land & Water Conservation Fund
  - USDA Farm & Ranchland Protection Program
  - USFWS
- State and local conservation programs funded by:
  - Legislative appropriations
  - Bond measures
  - Tax initiatives
  - Mill levies
- Private foundations and donors

Selling a Conservation Easement

- Income from sale of easements treated as a <u>Capital Gain</u>

- Amount of federal Capital Gains tax owed will depend on landowner's "basis" in the land – the land's initial value at the time of purchase.

Conservation Development

- Landowner's financial needs and profit motivation do not have to be incompatible with conservation
- Can generate income which may allow landowner to subsidize conservation of larger property
- Private sector approach – no public funding is involved

Conservation Easement Process

- Step 1 – Landowner and land trust meet
- Step 2 – Landowner consults with family and advisors
- Step 3 – Title review and other due diligence
- Step 4 – Mineral rights and environmental assessment
- Step 5 – Baseline documentation report

Conservation Easement Process

- Step 6 – Easement negotiation and drafting
- Step 7 – Conservation easement appraisal
- Step 8 – Final approval and recording of easement
- Step 9 – Landowner files tax return

Easement Stewardship and Other Issues

- Monitoring, stewardship and legal defense
- Amendment
- Transfer
- Termination
- Condemnation

Services NMLC Can Offer in Support of Open Space Preservation

- Public relations, education and outreach
  - *Agricultural Land Conservation Forum – Farm & Ranch Heritage Museum - Oct. 6, 2011*
- Conservation real estate transactions:
  - Conservation planning
  - Landowner negotiations
  - Conservation easements
  - Fee acquisition
  - Baseline documentation
  - Appraisal facilitation
  - Tax incentives and conservation funding expertise

How You Can Help

- Promotion of public education
- Incorporation of open space and agricultural land conservation issues into comprehensive planning
- Support for existing and future programs
  - State tax credit program
  - Dedicated state funding
  - Local bond measures and other conservation finance mechanisms
- Creation of supportive environment for more public/private collaboration and partnership

The Parting Thought and Shot

We only get one shot at this in the American West…when it's all paved over, the opportunity is gone. This is an obligation of a generation…to make certain that the heritage we receive also becomes the legacy we leave.

Wallace Stegner

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For More Information…

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Member of the Land Trust Alliance