



## FARMLAND INFORMATION CENTER

# FACT SHEET

## AGRICULTURAL CONSERVATION EASEMENTS



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### DESCRIPTION

A conservation easement is a deed restriction landowners voluntarily place on their property to protect resources such as productive agricultural land, ground and surface water, wildlife habitat, historic sites or scenic views. They are used by landowners (“grantors”) to authorize a qualified conservation organization or public agency (“grantee”) to monitor and enforce the restrictions set forth in the agreement. Conservation easements are flexible documents tailored to each property and the needs of individual landowners. They cover either an entire parcel or portions of a property. The landowner usually works with the prospective grantee to decide which activities should be limited to protect specific resources. Agricultural conservation easements are designed to keep land available for farming.

### RESTRICTIONS

In general, agricultural conservation easements limit subdivision, non-farm development and other uses that are inconsistent with commercial agriculture. Some easements allow lots to be reserved for family members. Typically, these lots are small—1 to 2 acres is common—and located on the least productive soils. Agricultural conservation easements often permit commercial development related to the farm operation and the construction of farm buildings. Most do not restrict farming practices, although some grantees ask landowners to implement soil and water conservation plans. Landowners who receive federal funds for farm easements must implement conservation plans developed by the USDA Natural Resources Conservation Service.

### TERM OF THE RESTRICTIONS

Most agricultural conservation easements are permanent. Term easements impose restrictions for a specified number of years. Regardless of the duration of the easement, the agreement is legally binding on future landowners for the agreed-upon time period. An agricultural conservation easement can be modified or terminated by a court if the land or the neighborhood changes and the conservation objectives of the easement become impossible to achieve. Easements may also be terminated by eminent domain proceedings.

### RETAINED RIGHTS

After granting an agricultural conservation easement, landowners retain title to their property and can still restrict public access, farm, use the land as collateral for a loan or sell their property. Land subject to an easement remains on the local tax rolls. Landowners continue to be eligible for state and federal farm programs.

### VALUATION

Landowners can sell or donate an agricultural conservation easement to a qualified conservation organization or government body. In either case, it is important to determine the value of the easement to establish a price or to calculate tax benefits that may be available under federal and state law. The value of an agricultural conservation easement is generally the fair market value of the property minus its restricted value, as determined by a qualified appraiser. In general, more restrictive agreements and intense development pressure result in higher easement values.

### TAX BENEFITS

Grantors can receive several tax advantages. Donated agricultural conservation easements that meet Internal Revenue Code section 170(h) criteria are treated as charitable gifts. The 2008 Farm Bill renews through 2009 the increased incentives authorized by the Pension Protection Act of 2006. The extension allows landowners to deduct the value of conservation easements up to 50 percent of their Adjusted Gross Income (AGI) compared to the former limit of 30 percent. The unused portion of the easement value may be carried forward for up to 15 years, as opposed to five. In addition, “qualified farmers and ranchers”—defined as individuals or corporations who earn more than 50 percent of their gross income from the business of farming in the taxable year in which the gift is made—still can deduct the value of the easement up to 100 percent of their AGI with a 15-year carry forward. Corporations were formerly limited to 10 percent of AGI with a five-year carryforward.

In addition to the federal income tax incentives, most state income tax laws provide for charitable deductions of conservation easements.

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For additional information on farmland protection and stewardship, contact the Farmland Information Center. The FIC offers a staffed answer service, online library, program monitoring, fact sheets and other educational materials.

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Twelve states offer income tax credits for easement donations on agricultural land.

Tax codes in some states direct local tax assessors to consider the restrictions imposed by a conservation easement. This provision generally lowers property taxes on restricted parcels if the land is not already enrolled in a differential assessment program. Differential assessment programs direct local tax assessors to assess land at its value for agriculture or forestry, rather than for residential, commercial or industrial development.

The donation or sale of an agricultural conservation easement usually reduces the value of land for estate tax purposes. To the extent that the restricted value is lower than fair market value, the estate will be subject to a lower tax. In some cases, an easement can reduce the value of an estate below the level that is taxable, effectively eliminating any estate tax liability. However, as exemption levels increase, there may be less incentive from an estate tax perspective.

The Economic Growth and Tax Relief Reconciliation Act of 2001 expanded an estate tax incentive for landowners to grant conservation easements by removing the geographic eligibility requirements. Under Section 2031(c) of the tax code, executors can exclude 40 percent of the value of land subject to a donated qualified conservation easement from the taxable estate regardless of the property's location. This exclusion is limited to \$500,000 but is in addition to any reduction in the value of the estate as a result of protecting the land with a conservation easement. The full benefit is available for easements that reduce the fair market value of a property by at least 30 percent. A smaller exclusion is available for easements that reduce property value by less than 30 percent.

### HISTORY

Forty-nine states have a law enabling conservation easements. The National Conference of Commissioners on Uniform State Laws adopted the Uniform Conservation Easement Act in 1981. The Act served as a model for state legislation allowing qualified public agencies and private conservation organizations to accept, acquire and hold less than fee simple interests in land for the purposes of conservation and preservation. Since the Uniform

Conservation Easement Act was approved, 23 states have adopted conservation easement enabling laws based on this model, and 26 states have drafted and enacted their own enabling laws. In addition, 27 states have authorized state-level purchase of agricultural conservation easement (PACE) programs since 1977. PACE programs compensate landowners for placing restrictions on their land to keep it available for agriculture.

### BENEFITS

Agricultural conservation easements:

- Permanently protect important farmland while keeping the land in private ownership and on local tax rolls.
- Are flexible documents that can be tailored to meet the needs of individual farmers and ranchers and unique properties.
- Can provide farmers with several tax benefits including income, estate and property tax reductions.
- Can help farmers and ranchers transfer their operations to the next generation.

### DRAWBACKS

- Agricultural conservation easements do not ensure that the land will continue to be farmed.
- Donating an easement is not always a financially viable option for landowners.
- Monitoring and enforcing conservation easements requires a serious commitment on the part of the easement holder.
- Subsequent landowners are not always interested in upholding easement terms.
- Conservation easements do not offer protection from eminent domain. If land under easement is taken through eminent domain, both the landowner and the easement holder must be compensated.