

Frequently Asked Questions About Land Conservation...



With today's land values, property you own in Santa Barbara County may be one of your largest assets. Making that land work economically today, and being able to pass it on to your family's next generations, requires careful planning.

*Agricultural landowners have a unique set of **voluntary tools** that can help ensure your land stays in agricultural production or natural open space, and in your ownership, while you receive some of its appreciated value.*

*The Land Trust for Santa Barbara County works with **conservation easements** – negotiated legal agreements that leave land in private ownership, available for agricultural and/or residential use by the owner. An easement protects identified **conservation values** of the property – such as productive agriculture or rangeland, wildlife habitat, scenic views or historic sites.*

A tool created by federal and state law for use by landowners and land trusts, more and more ranch and farm owners across the U.S. are using conservation easements to protect the rural, agricultural and wildlife landscapes our community cares about - through fair, negotiated transactions with land trusts. As of 2004, some 34 million acres of land have been protected through transactions with non-profit land trusts that are members of the national Land Trust Alliance. Over 17,000 property owners have negotiated conservation easements with local and regional land trusts, covering over 5 million acres of working farm, ranch and forest land.

*Qualifying conservation easements provide one way **a landowner can benefit now from the market value of their land without selling it**, by agreeing to limit their right to subdivide and develop the land, in exchange for income and estate tax benefits or grant payments.*

This publication offers answers to questions you may have about conservation easements. This is general information, and property owners should consult their own tax and legal advisors when considering land protection options.

What is a land trust?

A land trust is a private, non-profit 501(c)(3) corporation chartered to engage in land conservation projects with willing landowners to protect land for its agricultural, natural, scenic or historic values. There are over 1,500 independent land trusts operating in the United States.

More information about land trusts and links to web sites about land conservation can be found at www.sblandtrust.org. Another good information resource for landowners is the national Land Trust Alliance www.lta.org/conserv/index.html.

Why do people place conservation easements on their land?

People who make this lasting commitment to keep their land open generally start with a love for the land, and a desire to see it kept intact as a farm, ranch or natural area. People often enter into conservation agreements that help them with their financial, business and estate planning while achieving their own goals for the land.

For some families, transferring land to the next generation may mean selling some or all of a ranch to settle an estate and pay estate taxes. Others may need to sell land to fund business, family or retirement needs.

Federal and state income and estate tax incentives, and in some cases public and private grants to landowners, can provide economic alternatives to paying large estate tax bills on appreciated land, or selling land to generate needed cash. Landowners use the tax savings or grant payments to settle estates, cash out family or partnership interests, make improvements to their ranch or farm, buy land or purchase another asset or a life insurance policy to benefit their heirs.

What is a conservation easement?

A conservation easement is a legal agreement between the owners of a property and a land trust or government agency that is intended to permanently protect defined “conservation values” of the property.

Ranches or farms that qualify for conservation easements generally have features such as productive agricultural land, significant wildlife habitat, scenic views from public roads, or historic sites.

The conservation easement is a permanent restriction on the property deed that limits subdivision and development of the property to protect the conservation values, while not affecting the other rights of private ownership. The property may be borrowed against, sold, leased or otherwise transferred, subject to the conservation agreement.

A conservation easement typically limits subdivision, permits an agreed upon number of future homes, and allows land uses and improvements related to agriculture, including employee housing. It protects the land for agricultural use and provides flexibility in agricultural management. It does not require the owner to engage in commercial agriculture. It may contain specific provisions to protect environmentally sensitive areas from being cleared or intentionally damaged, or to protect scenic public views by placing allowed future homes in mutually agreeable locations.

Each easement is unique to the property, and the terms are negotiated between the owner and the Land Trust. Of course, a conservation easement must meet minimum public standards to qualify for tax incentives or grants.

Legally, the landowner grants to a specific land trust or government agency the rights necessary to enforce the conservation restrictions on the current and all future owners. The Land Trust’s model conservation easement contains the typical legal requirements.

What type of land qualifies?

Not every undeveloped farm or ranch will qualify. The tax laws and current government grants are available for private land conservation that provides significant public benefit. This does not mean the public must have access to the land. Generally, land must be large enough and have identifiable features that meet public conservation purposes, such as:

- To preserve important, relatively natural habitat;
- To protect open land, including commercial agricultural land, pursuant to a “clearly delineated governmental policy;”
- To preserve a scenic view for the general public from nearby parks, trails or highways;
- To preserve land for public outdoor recreation or education or to protect publicly recognized historic property or features.

A property does not have to be undeveloped or completely “natural” to qualify. It needs to have conservation values that provide benefit to the general public, and that can be conserved by the landowner’s commitment in the easement to conduct current and future human uses in a manner that protects those conservation values.

Does a conservation easement require public access to the land?

No. A conservation easement does not require or create public access, and doesn’t change any of the landowner’s rights to control who comes on their property.

Does a conservation easement involve government approval and enforcement?

The land and resource protections in a conservation easement are negotiated between the landowner and the land trust or agency that has agreed to hold it. Of course, the conservation protections and legal terms must meet minimum standards set by the federal and state tax laws and regulations.

Once the easement is granted to a qualifying organization, the landowner files an income tax return claiming the charitable gift of a conservation easement, with the independent appraisal report they have commissioned stating the value of the easement. The Internal Revenue Service may audit taxpayers who claim large charitable contributions. It is very important to work with a capable land trust, a real estate appraiser who has experience valuing conservation transactions, and a tax advisor who is knowledgeable of the applicable laws.

For easements purchased with government grants, the staff and governing board of the funding agency typically must approve the easement before it is granted to a land trust. Generally, conservation easements purchased with government funds will have more specific requirements. Grant agencies may retain the right to approve amendments or any future transfer of the easement from the original grantee to another qualified organization. Grant agencies receive copies of annual monitoring reports prepared by the land trust, and some agencies reserve the right to have their staff accompany the land trust on it’s annual monitoring visit. The enforcement rights are held only by the land trust or agency designated to hold the easement.

What are the financial benefits to the landowner?

Tax incentives help some landowners take advantage of their land conservation interest. This information is general, and not intended to be tax advice. Each owner should consult his/her own attorney or accountant regarding the tax implications of any grant of conservation interests to a qualified non-profit or public agency.

The potential benefits of a qualified conservation easement are in two areas. Only perpetual conservation easements qualify for these tax incentives.

First, the value of the donated easement is considered a charitable contribution, generating an **income tax deduction** that can be taken over several years. For individual taxpayers, current law allows an income tax deduction of up to 30 % of adjusted gross income. The unused portion of the easement value can be carried forward for the next five years. Given coastal California’s high land values, many long-time farm and ranch owners cannot take full advantage of the tax deduction. It may be possible to grant a conservation easement in “phases” over a period of years to make maximum use of the tax incentives.

Second, the donation of a conservation easement generally reduces the appraised value of the land and results in **estate tax savings**. Too often, heirs must sell all or a portion of their land to pay estate tax or settle an estate among multiple heirs. Conservation planning can reduce or in some cases eliminate estate tax liability, and provide more flexibility for families.

A conservation easement can be granted by the owner during their lifetime, in their will, or post-mortem if the beneficiaries agree.

Generally, the appraised value of the conservation easement is removed from the taxable estate, and most estates can also deduct a maximum of \$500,000 of the remaining land value from the taxable estate.

Some families use a combination of gifting to heirs or family partnerships, conservation easements, and life insurance or other value replacement trusts to pass land on to the next generation while minimizing tax exposure. The landowner income from the sale of a conservation easement is taxable. It is possible to use the proceeds of selling a conservation easement to invest in another asset through a "1031 Exchange," thus deferring capital gain tax.

Some property owners agree to sell an easement at lower than the appraised value (a "bargain sale"), and the discount the owner offers is considered a tax deductible charitable gift. This partial donation can help reduce taxes on the income from selling the conservation easement.

Who sets the value of a conservation easement?

Whether a conservation easement is being donated or sold, the owner must obtain an independent real estate appraisal to determine the value of the easement. The tax incentives or purchase price are based on this appraisal.

The value of the easement is generally calculated as the current fair market value of the property ("before value"), minus the estimated market value if the proposed conservation agreement were in place ("after value"). In Santa Barbara County, land that has greater development potential, such as a ranch or farm with several separate legal parcels that could be sold or developed, will have a higher easement value than similar property that is not subdivided. Proximity to city limits may also influence the conservation easement value.

When the property owner claims the charitable contribution of the conservation easement, the appraisal may be reviewed by the Internal Revenue Service. Easements purchased with government grants usually require acceptance of the appraisal by a grant agency review appraiser.

The Land Trust can provide a list of local appraisers experienced in valuing agricultural land and conservation easements.

Who monitors and enforces a conservation easement?

The holder of the conservation easement – a qualified non-profit land trust or a public agency – is the only entity with the legal authority to monitor and enforce a conservation easement. The easement holder has a legal obligation, and specific authority under state law and in the easement terms, to ensure compliance with the easement by the current and all future owners.

At the time a conservation easement is signed, a comprehensive baseline report is prepared with information gathered from the landowner and other sources to document the existing roads, buildings and other improvements, the current and historic agricultural uses, and the natural resource conditions of the property. For land with significant habitat value, the baseline report includes a biological resources evaluation.

The Land Trust for Santa Barbara County conducts a site visit to monitor each of its conservation easements (26 properties as of March 2006) generally once each year, and more often if circumstances require.

Land Trust representatives (staff and one or two board members) visit the property by appointment with the owner, and tour it to document any changes in natural conditions, land use and improvements from the previous year that pertain to the easement. The Land Trust prepares a written monitoring report, and the landowner receives a copy.

If the Land Trust determines that an activity or use does not comply with the easement, it will request that the landowner bring the property into compliance. Problem-solving steps available to the landowner and the Land Trust, including management plans, arbitration of disputes and legal remedies, are written into each conservation easement

Third parties do not generally have legal rights to enforce conservation easements in court, unless an additional party is named in the easement to have this authority. In some cases, the Land Trust and a landowner agree to name an alternate agency to hold the easement if the Land Trust becomes unable to do so.

Can an easement be amended or terminated?

A conservation easement may be amended, by mutual agreement of the landowner and land trust. Any amendment must be consistent with the conservation purpose and protections of the easement. An amendment cannot be approved that will increase development rights or otherwise create “private inurement” (financial benefit), or that may decrease protection of the property’s conservation values. Generally, amendments are used to correct errors or clarify or address matters not covered in the original easement.

It is difficult to terminate a conservation easement. Usually a review by the State Attorney General and court approval is required. A current or future owner cannot change their mind and decide to develop the land. Easements purchased with government funds require approval of the grant agencies for amendments or termination, and may require repayment of the grant if a conservation easement is terminated.

Who runs the Land Trust for Santa Barbara County?

The Land Trust is an independent, non-profit corporation that operates only in Santa Barbara County. It is governed by a board of trustees that includes people who work in law, banking, real estate, ranching, land use, education, art and community service. The board authorizes and approves all conservation transactions.

A professional staff of four works with property owners and their advisors to evaluate conservation goals and options, and to negotiate conservation easements that qualify for available federal and state tax incentives or grants. Land Trust staff, sometimes joined by a board member, conduct annual site inspections and work to foster good relations with easement property owners.

The Land Trust for Santa Barbara County is a sponsor member of the national Land Trust Alliance, and has adopted the national Land Trust Standards and Practices, Revised 2004. Annual non-profit financial statements are available upon request.

Who can evaluate options for my land?

It begins with you. The first step in conservation planning is identifying your long term needs and goals for the property. For land owned in family trusts or in multiple undivided interests, considering how a conservation plan fits with all the current and future owners can be complicated.

Some key questions to ask yourself:

What is valuable about my land in terms of agriculture, natural resources, scenic beauty or history?

Do the “conservation values” of my land provide benefit to the community, offering wildlife habitat, scenic views or working agricultural buffers that a land trust might help to protect?

What do I envision for the land to meet the needs of my family and heirs for homes? To provide future liquidity? To keep a viable farm or ranch business?

Am I willing to consider giving up some future development rights, through a voluntary conservation agreement intended to last in perpetuity?

Could conservation planning and financial incentives help realize my business or family goals?

Once you have identified your needs and conservation possibilities that might qualify for the available landowner incentives, perhaps working with a land trust, your professional legal and tax advisors can best evaluate the legal and tax implications of donating or selling a conservation interest in your land.

The Land Trust for Santa Barbara County does not provide legal or tax advice to individual property owners. We do have several publications intended for conservation-minded landowners and their advisors.

Our staff is happy to confer by phone or meet with landowners, at no charge, to discuss conservation planning and options.

***THANK YOU for taking the time to become informed
about the Land Trust for Santa Barbara County
(805)966-4520 www.sblandtrust.org***