

THE KATY LAND TRUST

PRESERVING FARMS AND FORESTS
ALONG THE KATY TRAIL

A Landowner's Guide to Agricultural Conservation Easements

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Agricultural conservation easements can help protect farming and ranching as a way of life and also be an effective and practical planning tool that benefits the farm or ranch, as well as the bottom line. The land, business, estate and financial planning should all be considered. This process can be an integral step in succession planning.

An agricultural conservation easement is a voluntary agreement between a landowner and a land trust, or a public agency to permanently protect a property's agricultural values by allowing for continued farming or ranching while limiting future development and other harmful uses. Easements "run with the land" meaning they remain in place even after the property changes ownership.

Below are some frequently asked questions:

How does a conservation easement affect property rights and value?

Landowners still hold title to their property and the rights of ownership, such as the right to sell the property, lease the land, leave it to their heirs, the right to privacy; in addition, property also has other rights such as the right to harvest timber and minerals, use and divert water, till the earth, raise livestock or subdivide and develop. A conservation easement will restrict some of these property rights, while retaining agricultural uses.

By restricting certain property rights, conservation easements may reduce the value of the property. This can help a family pass land to the next generation without subdividing and/or developing it to pay the inheritance taxes. This is particularly important in agricultural areas facing the conversion of agricultural lands to urban uses.

Does the easement have value and how is it determined?

The easement restricts certain property rights, and the value of the conservation easement is the difference between the value of the highest market value for the property before the easement, and the market value of

the property after the easement is in place. This is called the "before and after" approach to valuation; the "after" value typically reflects the property's restricted value. A qualified, credentialed appraisal is always used to determine the easement value.

The value of the easement may be donated or sold, or some portion of the value donated with the remaining portion sold. Funds for purchasing an easement may be available through public or private grants. If some or all of the easement value is sold, then the land trust must locate and obtain the funding for the purchase of the easement if available. There is no guarantee that grant funds can be located in every circumstance.

Does a conservation easement cover the entire property?

In most cases the conservation easement covers the entire property, but a landowner can exclude specific areas.

Do landowners need an attorney to place a conservation easement on their property?

Placing a conservation easement on your property can have significant land use, income tax and estate planning consequences. It is the policy of the land trust to require landowners to have qualified legal counsel before completing a transaction to assist in the decision making process and review of legal documents.

What are the tax implications for a landowner placing a conservation easement on their property?

It is important for the landowner to secure the advice of a qualified tax advisor to obtain information regarding the specific tax consequences for either the donation or sale of an easement.

Estate Tax: Conservation easements may help reduce estate taxes by excluding the easement value from the taxable value of the estate. This can help a family pass land to the next generation without having to sell, subdivide or develop their family's land to pay for the estate taxes. The Federal Taxpayers Relief Act of 1997 allows beneficiaries to exclude from the taxable estate 40% of the value of land for qualifying conservation easements subject to limits. This is in addition to the reduction in the value of the land resulting from the easement itself.

Income Tax: The landowner may be able to take a Federal income tax deduction if the easement is permanent and donated as a bona fide charitable contribution.

Property Tax: The property taxes could be significantly lowered once the easement is placed on the property. In some cases, depending on the circumstances, the assessor has not lowered property taxes, and therefore

no guarantee is offered. It is always best to speak directly to the county tax assessor regarding your situation.

Capital Gains Tax: Selling an easement is considered as a sale of a capital asset and is treated as capital gain to the extent that the proceeds exceed the basis in the property. The sale of an easement may qualify for a 1031 "in-kind" exchange to defer capital gains taxes while allowing the property owner to acquire additional property. It is strongly recommended that an attorney experienced in 1031 exchanges is consulted if considering this method of tax deferral of capital gains.

The Katy Land Trust strongly urges all landowners to seek out their own counsel on tax and legal issues.

Does a conservation easement affect borrowing power?

Not necessarily. The easement itself does not restrict use of the property as collateral for borrowing; and the property may still have significant value even with a conservation easement.

Is a mortgage affected by a conservation easement?

Yes, any mortgage or deed of trust or other monetary lien on the property must be either discharged prior to the easement or subordinated to the easement. In the case of subordination it is advisable to talk to your lender well in advance of placing an easement on the property to determine what, if any, requirements they may have.

What are the associated costs to a conservation easement?

Potential costs may include appraisal costs, stewardship endowment donation, and attorney fees for the legal review.