

# AGRICULTURAL CONSERVATION EASEMENTS

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, 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 must be 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 an agricultural land easement conservation plan approved by the USDA Natural Resources Conservation Service.

## Terms 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 the land, use it 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. It is important to determine the value of the easement to establish a price or to calculate tax benefits 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 conservation easements that meet Internal Revenue Code section 170 (h) criteria are treated as charitable gifts. In 2015, as part of a year-end appropriations bill, Congress made the income tax deduction for donated conservation easements permanent. Lawmakers also restored higher deduction limits and extended the carry-over period previously authorized by the Pension Protection Act of 2006. Donors can deduct the value of the conservation easement up to 50 percent of their adjusted gross income (AGI) in the year



### Agricultural Conservation Easements

- Establish protection of agricultural resources as the primary purpose. Some also reference ag viability.
- Often use the state definition of agriculture to provide flexibility over time.
- Typically permit agricultural structures by right but may restrict to a designated building area and/or limit total impervious surface area.

of the gift. Corporations are limited to a 10 percent deduction. Donors can apply any excess easement donation value toward federal income taxes for the next 15 years, subject to the same percentage limitations. In addition, “qualified farmers and ranchers”—defined as individuals or corporations who earn more than 50 percent of their gross income from farming in the taxable year in which the gift is made—to deduct the value of the agricultural conservation easement on property used in agriculture or livestock production up to 100 percent of their AGI with a 15-year carryover. The incentive applies to donations made after December 31, 2014.

In addition to the federal income tax incentives, most state income tax laws provide for charitable deductions of conservation easements. At least 14 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. Florida exempts eligible permanently protected land from property taxes. Protected properties on which allowed commercial uses, such as agriculture, are conducted receive an exemption equal to 50 percent of the land’s assessed value.

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.

The Economic Growth and Tax Relief Reconciliation Act of 2001 expanded an estate tax incentive for landowners to grant conservation easements. Under Section 2031(c) of the tax code, executors can exclude up to 40 percent of the value of land subject to a qualified conservation easement from taxable estates. 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 only 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 authorizing permanent 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 (land trusts) 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, 21 states, the District of Columbia and the U.S. Virgin Islands have adopted conservation easement enabling laws based on this model. Twenty-eight states have drafted and enacted their own enabling laws. In addition, 31 states authorize and/or operate state-level purchase of agricultural conservation easement (PACE) programs. 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.
- May provide farmers with several tax benefits including income, estate and property tax reductions.
- May help farmers and ranchers transfer their operations to the next generation.

## Drawbacks

- 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.

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For more information, see the resources on [agricultural conservation easements](#) on the Farmland Information Center (FIC) website. The FIC is a clearinghouse for information about farmland protection and stewardship. The FIC is a public/private partnership between the USDA Natural Resources Conservation Service and American Farmland Trust.