Sheridan Community
LAND TRUST
Conservation | History | Recreation
Connecting people to land and history



Understanding Conservation Easements

Contents

Frequently Asked Questions 4

What is a conservation easement? 4

Why should I pick SCLT? 4

What are the financial benefits of a conservation easement? 4

Tax incentives 4

Cash 5

What is the difference between donated and purchased easements? What is a bargain sale easement? 5

How are conservation easements valued? 5

What is meant by placing a conservation easement on a property "in perpetuity?" 5

Will a conservation easement result in the loss of landowner control of management? 5

What rights are normally conveyed? 5

Can a conservation easement ever be amended or terminated? 6

Can there be oil and gas development on a property with a conservation easement? 6

What are the public benefits? 6

Do conservation easements require public access? 6

Steps and Costs Associated with Completing a Conservation Easement 6

Contact SCLT & apply 6

Meet with the land trust and tour the property 6

Review by SCLT's Conservation Easement Working Group 6

Preliminary approval from SCLT Board of Directors 7

The appraisal process 7

Purchase and sale agreement 7

Checking the title 7

Legal description for the property 7

Funding applications (if applicable) 7

Mineral report 7

Survey 8

Constructing the conservation easement document 8

Completion of baseline document 8

Mortgage subordination or release 8

Funder review of due diligence (if applicable) 8

Closing instructions 8
Final board approval 8
Signing of the conservation easement 8
Recording the conservation easement 9
Project Coordination Contribution (purchase easements only) 9
Stewardship gift 9
Annual monitoring 9
Total Costs of Selling a Conservation Easement 9
Professionals 11
Accountants 11
Appraisers 11
Attorneys 11
Geological Consultants 12
Professional Surveyors 12

Frequently Asked Questions

What is a conservation easement?

Conservation easements are voluntary, perpetual agreements, custom-crafted to meet the specific needs of the landowner, which limit the amount and type of development on all or part of a property. This tool safeguards that the land is maintained as designated by the landowner for specific purposes for future generations, regardless of ownership. With a conservation easement, landowners continue to own the property and maintain all rights of property ownership. Sheridan Community Land Trust (SCLT) monitors easements annually as approved by landowners. Since such easements are generally donated by the landowner, in many cases, there can be significant tax advantages for doing so.

Why should I pick SCLT?

SCLT is based here in your community and work with our partnering landowners beyond the establishment of the conservation easement. Over the years, this long-term relationship with our partnering landowners with conservation easements has included helping conduct vegetation monitoring, notifying of available grant dollars for land management projects, and community celebrations.

We work to promote agricultural landscapes, open space, wildlife habitats, historical structures and sites, and to provide opportunities for recreation. These interests are complementary and essential to the quality of life and economic stability in our community.

Individuals on our board of directors are selected so that the board of directors' composition includes knowledge and expertise in real estate, legal, management, financial, public relations, farming and ranching, as well as government affairs and fundraising experience.

What are the financial benefits of a conservation easement?

Financial incentives, including cash and various tax incentives, have been established to encourage landowners to conserve their lands. These incentives help landowners to diversify or expand their operations, pay down debt, or save for retirement. The value of a conservation easement is determined by a qualified appraiser and will vary considerably depending upon the terms of the agreement, location, and local development pressure. Conservation easement values for working ranches in the West often range from 30% to 70% of the fair market value of the property.

Tax incentives

A conservation easement may be treated as a charitable gift, making the value of the easement tax deductible. The 2015 permanent conservation easement tax incentive allows for non-farmers and ranchers who donate an easement to receive a deduction on their income tax of up to 50%. The same rule allows qualified farmers and ranchers to reduce their income taxes by up to 100%. These tax benefits can be carried over for up to 15 years. For more information visit: LTA Tax Brochure, or visit your accountant.

Cash

SCLT works to raise money from public and private funding sources to purchase a portion of a conservation easement with cash. This is known as a "bargain sale" conservation easement. Up to 75% of the value of the easement is purchased in a bargain sale transaction. The remaining 25% or more is treated as a donation and compensated through the various tax benefits described above. Funding for bargain sale transactions is limited.

What is the difference between donated and purchased easements? What is a bargain sale easement?

With a donated conservation easement, landowners donate the full appraised value of the conservation easement. They are compensated through federal tax incentives. With a purchased conservation easement, a land trust pays for a portion or full appraisal value of the conservation easement. Bargain sale conservation easements are a type of purchased conservation easement that employs both a purchase and donation component. Landowners are paid in cash for the purchased portion and compensated through tax incentives for the donated portion.

How are conservation easements valued?

Conservation easements are valued according to what is called the "before and after test" performed by a qualified, certified appraiser. The appraiser establishes the value of the property both with and without a conservation easement, and the difference between the two is the value of the easement.

What is meant by placing a conservation easement on a property "in perpetuity?"

Conservation easements "run with the land" and remain on the property even if it is sold or passed on to heirs. Perpetuity is a requirement of federal tax law for an easement donation to be tax-deductible. It does not violate Wyoming's constitutional law against perpetuity for serval reasons including immediate vesting interest, specific allowance under the Wyoming Conservation Easement Act, and supported case law upholding the rights of a conservation easement to run with the land in perpetuity.

Will a conservation easement result in the loss of landowner control of management?

Conservation easements put limitations on future development of the property to retain the land's agricultural capacity and/or open character and views. The terms of conservation easements are designed to conserve these features without undermining the ability of a landowner to make day-to-day decisions about the management of their farm, ranch, or non-agriculture property. By prohibiting residential development (the main effect of a conservation easement), conservation easements secure the land base or open character of the property.

What rights are normally conveyed?

The most important rights that landowners will be conveying in a conservation easement are the rights to subdivide the land and to develop the land. The terms of the easement, as determined by

both parties, guide the stringency of these restrictions. SCLT works with landowners and funding partners to ensure the least restrictive terms are included in the easement as possible.

Can a conservation easement ever be amended or terminated?

One can amend the provisions of a conservation easement if those amendments do not result in an increase in property value or other benefit to the landowner or another private party. Conservation easements can be terminated by judicial action whenever the purpose of the easement can no longer be fulfilled. Termination may also be conducted by the government through an act of condemnation.

Can there be oil and gas development on a property with a conservation easement?

Conservation easements that qualify for federal income tax benefits must prohibit surface mining. The extraction of sub-surface minerals, including oil and gas, by techniques that have minimal surface disturbance, is allowed.

What are the public benefits?

Conservation easements help to ensure that lands are available to produce our food and fiber, provide habitat for our wildlife, and protect the watersheds which recharge our streams and aquifers. In addition, they maintain our defining views and open spaces.

Do conservation easements require public access?

No. Decisions regarding public access to the property are left solely to the landowner. Some landowners choose to grant public access, and some funders are willing to pay for it.

Steps and Costs Associated with Completing a Conservation Easement

Contact SCLT & apply

If the landowner wishes to donate or sell a conservation easement, they should contact SCLT and submit the provided application. SCLT will meet with the landowner to discuss their interest in a conservation easement and provide preliminary documents.

Meet with the land trust and tour the property

SCLT staff will tour the property to become familiar with its different features and characteristics.

Review by SCLT's Conservation Easement Working Group

SCLT's Conservation Easement Working Group will review all potential projects and make recommendations to its Board of Directors.

Preliminary approval from SCLT Board of Directors

SCLT staff will share with SCLT's Board of Directors information about the property and the landowner's intent for the conservation easement. The SCLT Board of Directors will determine if the easement is compatible with its mission. The SCLT Board of Directors will determine how to proceed with the project.

The appraisal process

If the landowner intends to claim the value of the conservation easement as a charitable donation for federal income tax purposes or wishes to sell a portion of the value of the conservation easement, SCLT recommends that they seek independent legal, accounting, and financial counsel concerning the qualification and valuation of the conservation easement. Specifically, a qualified appraiser is needed to determine the prospective value attributed to the proposed easement. The U.S. Internal Revenue Service, for purposes of the federal income tax deduction, establishes regulations pertaining to the qualification and valuation of conservation easements as specified by Section 170 (h) of the Internal Revenue Code. Additionally, if federal funds are used to purchase a conservation easement, another appraisal will need to be prepared to qualify. A restricted appraisal will need to be obtained prior to SCLT submitting funding applications. This restricted appraisal will be finalized within one year of closing the easement. Landowners should ask prospective appraisers if they are familiar with appraising conservation easements when selecting an appraiser to work with.

Purchase and sale agreement

SCLT and the landowner develop a purchase and sale agreement. This contract lays out the terms and conditions for the transaction.

Checking the title

To insure SCLT is receiving a real estate interest in the property, SCLT will requests a title search to verify ownership and legal boundaries, as well as to reveal mortgages, liens, or access easements that might influence the easement's negotiation and administration. A title company must prepare a recent Title Policy, and SCLT retains a copy of the Policy on file.

Legal description for the property

SCLT will request the landowner provide an accurate legal description of the property. A legal description is typically found in the title search or may be taken from the property deed or legal survey.

Funding applications (if applicable)

SCLT will collaborate with landowners to prepare funding applications for the project based on a recently completed conservation easement appraisal.

Mineral report

For a conservation easement to qualify as a charitable gift, the easement document must include prohibitions against surface mining. If the landowner owns the mineral rights to the property, restrictions on surface mining are included in the terms of the easement. If the landowner does not

own the mineral rights, or owns only part of the mineral estate, the landowner must produce a report prepared by a certified geologist stating that the chances of mineral development are "so remote as to be negligible." Costs for the mineral report range from $2,000 to $3,000 or more for very large or complex projects.

Survey

SCLT requires a legal survey of the entire property and any building envelopes or exclusions to be completed and presented. This ensures accuracy of the project location and size.

Constructing the conservation easement document

If the property meets the prior qualifications, and the landowner and SCLT mutually agree on the terms and conditions, the landowner(s) and landowner(s) attorney should review and comment upon SCLT's conservation easement deed. Attorneys for both SCLT and the landowner are involved in reviewing easement drafts. The costs to the landowner associated with this step vary.

Completion of baseline document

The baseline report, an IRS requirement, is a record of the property's attributes at the time the easement is signed. The baseline report includes verification that environmental contamination or hazardous wastes are not present on the property.

Mortgage subordination or release

If the land is mortgaged, the landowner must work with their mortgage company to subordinate or release the mortgage before the conservation easement can be signed. If no subordination or release is obtained, the easement may be terminated upon foreclosure. This risk would jeopardize the easement's status as a perpetual agreement by the IRS.

Funder review of due diligence (if applicable)

For purchased conservation easements, certain funder(s) wish to review due diligence such as the conservation easement deed, appraisal, baseline report, minerals report, title work, and other relevant documents prior to releasing funds. SCLT will provide the funder(s) with the requested documents. Funder review of due diligence can take up to ninety days per document.

Closing instructions

Closing instructions are prepared by SCLT's attorney and reviewed by the landowner and landowner attorney prior to submitting them to the title company.

Final board approval

Before the SCLT's Board of Directors agrees to hold the conservation easement, they must approve the final conservation easement deed and supporting documents.

Signing of the conservation easement

The landowner and SCLT will sign the conservation easement at closing with the title company.

Recording the conservation easement

The signed conservation easement is a deed document that is recorded in the Sheridan County Clerk's office at the courthouse. The landowner and SCLT retain an original copy of the conservation easement deed, or if only one copy is available, SCLT retains the original and the landowner receives a copy of the easement deed for their personal file.

Project Coordination Contribution (purchase easements only)

SCLT policy is to receive reimbursement for all out-of-pocket costs incurred. Conservation easement transaction costs are the responsibility of the landowner and must be paid if an easement closes. In addition, a project coordination contribution is incurred for staff time on purchase easements due to the large time commitment they necessitate. This is a standard $10,000 per purchased easement. The coordination contribution is not incurred for donated easements. Any agreed upon out-of-pocket project expenses covered by the SCLT or project coordination fee will be reimbursed at closing or at an agreed upon alternative date.

Stewardship gift

There are costs associated with monitoring and enforcing the conservation easement in perpetuity. It is critical that SCLT will have the financial resources to fulfill its conservation easement stewardship obligations in the future. The landowner donates a financial contribution that will go toward the stewardship of the conservation easement in perpetuity. SCLT requests a stewardship contribution based on several factors. The contribution level will be discussed early in the process; but will be at least $10,000. Stewardship contributions are donations to a 501 (c) 3 organization and are tax-deductible.

Annual monitoring

As part of SCLT's requirements from the Land Trust Alliance and the IRS, the property must be monitored at least once per year. Landowners will receive notice of monitoring prior to the visit. Landowners or property managers are encouraged to attend the visits but not required. After each monitoring visit a report will be written up and sent to the landowner.

Total Costs of Selling a Conservation Easement

Out-of-pocket costs to complete an easement can range from $39,100 - $83,500, realized at various stages of the process, and include:

- Restricted, NRCS, and IRS Appraisals: $13,000 - $35,000
- Minerals Evaluation and Report: $2,000 - $5,000
- Survey and Legal Description: $1,000 - $5,000
- Attorney Reviews: $1,000 - $10,000
- Stewardship Contribution: $10,000
- Project Coordination Contribution (purchased easement only): $10,000
- Title Commitment and Insurance: $2,000 - $8,000
- Closing Costs: $100 - $500
- Total: $39,100 - $83,500

Bargain Sale Conservation Easements: SCLT is able to cover the restricted appraisal fee up to $10,000 for purchased easements, with reimbursement from the landowner due at closing.

Donated Conservation Easements: SCLT is able to help cover due diligence costs, up to $50,000 in total per project, including appraisals, mineral report, survey, and title commitment, title insurance, landowner legal fees. To qualify for this assistance, the project must be selected for funding by WWNRT before SCLT can cover costs. If the project qualifies, SCLT can pay directly for the appraisal, mineral report, survey, title commitment and insurance, and closing costs. Landowners are responsible for their own attorney fees up front. Landowners are responsible for the stewardship fund contribution.

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Note: this is a list of independent professionals who have varying experience with conservation easements. It is the landowner's responsibility to select an accountant, appraiser, attorney, geological consultant, and professional surveyor and determine their level of qualification.