



CONSERVATION EASEMENTS

by Julia Jackson

A conservation easement is a voluntary legal agreement between a landowner and a charitable organization or government entity that permanently protects scenic or agricultural open space, natural habitat, or recreational areas. These agreements can be tailored to preserve the specific qualities tied to the property, allowing it to remain under private ownership and control. For example, some agreements may preserve traditional land uses such as family ranching or farming. Conservation easements may or may not allow public access to the protected property. This issue brief discusses the status of conservation easements under state law, applicable federal and state tax incentives for the donation of conservation easements, and state purchases of conservation easements.

Colorado law defines a conservation easement as a right of the owner of the easement to prohibit certain acts with respect to the property in order to maintain the property in a manner that will preserve its value for recreation, education, habitat, open space, or historical importance.¹ Conservation easements typically limit the future development and use of a property. These restrictions are usually in perpetuity to meet federal tax guidelines. The land remains the private property of its owner.

Over 2 percent of the land in Colorado is protected by conservation easements, including land in every county. Table 1 provides information about the ten counties with the highest percentage of land subject to easement.

Table 1

Colorado Counties with the Highest Percentage of Land Protected by Conservation Easement

County	Acres Subject to Conservation Easement	Total County Acres	Percent County Acres Protected
Costilla	130,682	786,783	16.61%
Douglas	52,112	538,925	9.67%
Crowley	37,953	512,081	7.41%
Custer	32,912	473,236	6.95%
Pueblo	98,149	1,533,734	6.40%
Las Animas	185,121	3,054,895	6.06%
Huerfano	61,440	1,018,984	6.03%
Boulder	25,600	473,869	5.40%
Routt	75,114	1,515,920	4.95%
Archuleta	39,706	867,269	4.58%
Statewide	1,600,512	65,929,917	2.43%

Source: Colorado Ownership, Management, and Protection v9 Database, Colorado State University (2011).

Donated Conservation Easements

There are state and federal tax incentives for donations of conservation easements to government entities or land trusts.

Federal tax incentives. Federal law allows taxpayers to make a charitable donation of qualifying conservation easements. This donation can be deducted from federal

¹Section 38-30.5-102, C.R.S.

income taxes and can lower income taxes owed to the federal government. Federal law requires that easements meet a conservation purpose resulting in significant public benefit, such as preserving land for outdoor recreation, and that the easement be donated in perpetuity.²

State tax incentives. Colorado offers a state income tax credit for conservation easements that qualify as charitable contributions under federal law. This tax credit was originally enacted in 1999. In addition to donations, a seller may apply for this tax credit for the difference between the appraised value and actual sale price of an easement. The tax credit may also be transferred to another taxpayer. Any entity wishing to accept a conservation easement for which a tax credit will be claimed must be certified by the state's Division of Real Estate in the Department of Regulatory Agencies.

A conservation easement tax credit can be claimed for an amount equal to 50 percent of the appraised value of the donation, up to a maximum of \$375,000 per easement. In calendar years 2011 and 2012, the aggregate amount of credits that can be claimed is capped at \$22 million annually. In 2013 the annual cap will be \$34 million. The cap is removed beginning January 1, 2014. Figure 1 shows the total amount of credits claimed in Colorado over the last five fiscal years.

Figure 1
Conservation Easement Tax Credits Claimed
FY 06-07 through FY 10-11



Source: Colorado Department of Revenue Annual Reports.

Recent legislation. House Bill 11-1300 authorized a

²26 U.S.C. 170 (h)

new, expedited method for resolving disputed claims over conservation easement state income tax credits. As of March 1, 2012, approximately 183 appeals have been filed in the district courts, 8 of which have been resolved. One pending case will address four procedural issues that govern the majority of the remaining cases filed.

Purchased Conservation Easements

The Colorado Parks and Wildlife Commission (formerly the Wildlife Commission and the Parks Board) has the authority to purchase and lease land and water, or interest in land and water, for wildlife purposes, including habitat, conservation, and hunting and fishing.³ These purchases are typically made using Habitat Stamp or Great Outdoors Colorado (GOCO) funds. Many other state departments, including institutions of higher education, have the authority to acquire real interest in property, which could include conservation easements. Nonprofit organizations like The Nature Conservancy and Ducks Unlimited can also purchase conservation easements.

Legislative Oversight

State law requires the Capital Development Committee (CDC) to review and make recommendations on the acquisition of certain interest in real property, including conservation easements.⁴ The Parks and Wildlife Commission must submit a report of such proposals to the CDC when the period of the transaction exceeds 25 years or when the cost exceeds \$100,000.⁵ The CDC is charged with making recommendations concerning the transaction, and the commission must consider the CDC's recommendations. In the last five fiscal years, the CDC reviewed 56 easement transactions, one of which was withdrawn. Nineteen of these transactions were donations, and 36 were purchases. Purchase costs ranged from \$5,000 to \$5.3 million.

³Section 33-1-105 (1)(a), C.R.S.

⁴Section 2-3-1304 (1)(a.3), C.R.S.

⁵Section 33-1-105 (3), C.R.S.