



GUIDE TO AGRICULTURAL CONSERVATION EASEMENTS

An agricultural conservation easement is a voluntary agreement between a landowner and a land trust, such as the Yolo Land Trust (YLT), or a public agency, to permanently conserve a property's agricultural values by allowing for continued farming or ranching while limiting future development. Easements "run with the land" meaning they remain in place even after the property changes ownership. The conservation easement agreement is recorded against the title and becomes a permanent restriction on the use of the land. However, farming and ranching can continue, often in the same manner as before the easement agreement is recorded.

Agricultural conservation easements can help conserve farming and ranching as a way of life and the rural character and heritage of Yolo County. They can also be an effective and practical planning tool that benefits the farm or ranch. The land, business, estate and financial planning should all be considered. This process can be an integral step in succession planning.

Listed below are some frequently asked questions.

How does a conservation easement affect property rights and value?

Landowners still hold fee 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. Some of the other rights inherent in ownership of real property may be restricted, such as the right to subdivide the property or mine minerals. Generally, any practice that disturbs agricultural production or the soils will not be allowed.

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.

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 if funding is available, all or a portion (bargain sale) may be purchased by YLT through funding from public or private grants. Funding for easements is very limited and must be compatible to the landowner's uses and goals for the property. Funders impose restrictions on the use of funds. If some or all of the easement value is

purchased, it may take several months to a few years for YLT to locate and obtain the funding, and there is no guarantee that grant funds can be located. Donated easements have income tax benefits that are discussed below.

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?

We strongly recommend each landowner obtain legal advice. Placing a conservation easement on your property will have significant land use, income tax and estate planning consequences. YLT will not provide any tax or legal advice to you.

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. Listed here is general information that may be useful to prepare for meeting with your advisors.

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 rules are complicated so expert tax advice is required if this is the landowner's goal.

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. Again, the rules are complicated and strict, so expert tax advice is essential.

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 the landowner consult with an attorney experienced in 1031 exchanges if considering this method of tax deferral of capital gains.

Property Tax: If the property has a Williamson Act contract, generally property taxes will not be lowered as the result of the conservation easement. In other cases, the method the assessor uses to evaluate the taxable value depends on a variety of circumstances. There have been easements where the assessor has not lowered property taxes. It is always best to speak directly to the county tax assessor regarding your situation.

The Yolo Land Trust strongly urges all landowners to seek out their own counsel on all tax and legal issues. The Yolo Land Trust does not provide legal or tax advice.

Does a conservation easement affect borrowing power after the easement is recorded?

The easement itself does not restrict use of the property as collateral for borrowing after the easement is recorded. The property may still have significant value even with a conservation easement.

Is a deed of trust affected by a conservation easement?

Yes, any deed of trust or other monetary lien on the property **must be** either discharged prior to recording the conservation 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.

How is the amount of the easement project and stewardship funding determined?

A conservation easement is a perpetual obligation and responsibility, and it is required that funds are available to YLT to ensure the conservation easement is monitored annually. The amount the landowner will need to donate for the stewardship will vary depending on the nature of the restrictions in the conservation easement. Project costs must also be reimbursed. YLT also asks each landowner to make a charitable contribution to support the organization.

How long will the conservation easement process take?

It depends on whether the easement that is contemplated is being donated or sold. A donated easement may be completed sooner because obtaining funding to purchase an easement will be a several year process and may not be successful as there are very few dollars available to fund the purchase of conservation easements. Donating an easement still requires appropriate time to negotiate the easement, secure an appraisal, title documents, prepare a baseline conditions report and obtain legal review.

What are the associated costs to a conservation easement?

Potential costs are all of the appraisal costs, YLT's transaction costs, a sustainability contribution and a stewardship contribution.

How is the conservation easement monitored?

YLT visits each of its easement-conserved properties at least once each year with the landowner. These planned visits provide an opportunity to exchange information, to answer questions about the easement, and to compare the condition of the property with the baseline conditions report.

What is the next step?

You may want to schedule a meeting with our Executive Director, Michele Clark, to discuss your conservation easement project.

Thank you for your interest in conservation easements and in the Yolo Land Trust.