

## CONSERVATION EASEMENT 101

### *Is my land eligible for a conservation easement?*

To determine whether a conservation easement is a good fit for you and your property, CALT will evaluate your property for its conservation values. If you are seeking to donate the easement and take tax benefits the easement will be evaluated based on four categories established by tax code, referred to as the conservation purposes, including natural and culture resources, outdoor recreation, and open space preservation.

### *How does a conservation easement affect my property?*

When you enter into a voluntary conservation agreement with a land trust, you give up some of the rights *associated with your property*. For example, the right to subdivide the land or develop to its highest potential. However, conservation agreements allow for building envelopes and uses that do not interfere or diminish *the conservation values*.

### *What uses are allowed?*

Conservation easements vary widely, in most cases the easements protect natural resources and working landscapes, such as ranches and farms. The restrictions typically involve residential and commercial development, surface mining, and other activities that would damage the conservation values.

### *Will I need a special appraisal?*

A “qualified” conservation easement appraisal, completed by a general certified appraiser, is required to substantiate the conservation values used to request income tax deductions when donating a conservation easement. CALT as the qualified organization, will order the appraisal for use during the easement donation process. *The appraisal will determine the conservation value that will be used on IRS form 8283 at the time of donation.*

### *What is the baseline documentation?*

A baseline study is required to accompany every conservation easement. The report documents the condition of the property at the time the easement is placed on the land. Knowing the conditions in detail enables the land *trust to protect these interests in perpetuity*.

### *What about title work and mineral rights?*

Evidence of title, including encumbrances and exceptions, is required. If you do not own 100% of the minerals underlying your property it will be necessary to get a geology report analyzing the potential for the development of those minerals. If the geologist concludes, “the potential for the development of those minerals by any surface mining method is so remote as to be negligible,” the property is still eligible for a qualified conservation easement. Surveys may be necessary if there are boundary uncertainties or disputes. CALT will help you determine if a survey is necessary.

### *What if there is a mortgage on the property?*

Because conservation easements run with the land from the original landowner to subsequent owners, banks must be willing to agree that should a property be foreclosed on, the conservation easement will remain in full force and effect. This step is often not a problem, but must be done at the time of the conveyance of the easement.

### *Does A Conservation Easement Allow Public Access?*

A landowner who grants a conservation easement does NOT have to allow for public access. Some landowners convey certain public access rights, such as fishing or hiking in specified locations, but this is not required.

### *How Can Donating an Easement Reduce Taxes?*

To qualify for federal tax benefits, a conservation easement must be donated in perpetuity to a qualified conservation organization “exclusively for conservation purposes,” and satisfy the “conservation purposes test”. The easement can also result in an estate tax reduction and estate tax exclusion.

New tax incentives, enacted by Congress in 2015, are retroactive to January 1, 2015. These incentives were approved to make it easier for Americans with average incomes, including those owning working farms and ranches, to donate the development rights on their lands and receive tax benefits that can be substantial, they include:

**Income tax benefits:** If a qualified easement is donated during life, the property owner is eligible for an income tax deduction equal to the value of the easement, the conservation value based on an appraisal by a general, certified appraiser for such purposes. The deduction is limited to 50% of the donor’s ‘contribution base’ (generally, adjusted gross income, or AGI) in the year of the donation. Any excess may be carried forward and deducted for up to 15 years.

For an individual considered to be a ‘qualified farmer or rancher’, the allowable deduction is generally 100% of AGI, with a 15-year carry forward of any unused deduction. For a corporate ‘farmer or rancher’, the deduction is limited to 100% of the excess of the corporation’s taxable income over *the amount of all otherwise allowable charitable contributions. Any excess may be carried forward and deducted for up to 15 years.*

No income tax deduction is allowed if an easement is donated on the owner’s death.

**Estate tax benefits:** There are two: (1) the property value for estate tax purposes will be lower; and (2) An exclusion from the taxable estate is allowed for up to 40% of the remaining property value (maximum of \$500,000) in the estate. Both are available regardless of when the easement is donated, during life or at death.