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# Conservation Easements

*Preserving your land for  
future generations<sup>SM</sup>*





*“The attorneys at Isaacson Rosenbaum are the pioneers of conservation law & conservation easements in the Rocky Mountain region. Their knowledge and substantive expertise in handling conservation matters ensures the preservation and enhancement of our natural surroundings.”*

*– Dan Pike, President  
Colorado Open Lands*



## Conservation Easements

*Preserving your land for future generations*

Many Colorado farms and ranches will change hands in the next ten years, and landowners may be interested in exploring ways to protect their land while at the same time receiving economic benefit.

The past few decades have seen dramatic increases in the value of many family farms and ranches, particularly those which are in the path of suburban and resort area growth. Often farm and ranch land values have become so high that, notwithstanding recent changes to the federal estate tax law, children inheriting farms and ranches may be unable to afford the estate taxes that become due at the death of their parents. The only way for children to pay the estate tax bill may be to sell all or significant parts of their parents' acreage to real estate developers and the agricultural and open space resources may be lost forever.

Colorado law, particularly the conservation easement income tax credit, and the significant funding sources available for the purchase of conservation easements, create economic incentives for landowners to understand and consider conservation easements.

Attorneys in the Conservation Law & Conservation Easement practice group at Isaacson Rosenbaum combine their real estate and land use experience with an appreciation for land conservation to educate landowners about the immediate and long-term benefits of conservation easements. They also are advocates at the state government level on behalf of landowners and land trusts in changing tax laws to further protect Colorado lands.

As conservation easements have become more popular in the ranching and farming communities of Colorado and surrounding states, we are helping landowners take advantage of this technique to save taxes, and at times, receive financial compensation, while preserving open space.

In brief, a conservation easement protects the values of a property through a donation or sale of the future development rights to a private land trust or government entity. In doing so a landowner may:

- Qualify for a federal income tax charitable deduction
- Qualify for a Colorado conservation easement tax credit
- Dramatically reduce the market value of the acreage used to compute estate taxes.

This happens without loss of title to the land and without having to provide public access.

The charitable deduction is based on the loss of value that occurs when the rights to future development are permanently given away to a land trust, less any consideration received. By law, development cannot occur on this land. The estate tax savings comes from lower valuation. Appraisers assess land which cannot ever be developed as less valuable than land which eventually can be developed.

Over more than three decades, the conservation law attorneys at Isaacson Rosenbaum have represented private landowners, land trusts, local governments and conservation coalitions in preserving more than 900,000 acres of land through conservation easements. We are proud that our work is helping protect valuable land for future generations.

– *Bill Silberstein*

– *Larry Kueter*

– *Chris Jensen*

### **What is a conservation easement?**

A conservation easement is a legal document which contains permanent restrictions on the use or development of land.

### **Why do landowners enter into a conservation easement?**

Landowners enter into a conservation easement as a voluntary act to preserve land. Often landowners use conservation easements to keep property in its current condition. Each easement is individually crafted. Conservation easements may allow additional limited development; some landowners may want to provide home sites for their children or reserve a limited number of home sites as a source of future income.

### **What form does a conservation easement take?**


A conservation easement is a legal document entered into between a landowner, who is called a “grantor,” and a land trust, which is called a “grantee.” It is signed and recorded in the county real estate records.

### **What are the conservation purposes required for a conservation easement?**

A conservation easement must be made for one or more conservation purposes. These include the protection of wildlife habitat, the protection of open space and the preservation of agricultural lands.

### **What is a land trust?**

A land trust is the recipient of a conservation easement. Most land trusts are private, non-profit corporations. In many cases, the members of the board of directors of the land trust are typically members of the community in which the land trust operates. A governmental entity may also be the recipient of a conservation easement.



Rio Oxbow Ranch  
San Juan Mountains,  
Colorado

### **What is the role of a land trust?**

The land trust has the responsibility for enforcing development restrictions contained in the conservation easement. Representatives of a land trust will periodically inspect the property to verify that it is not being developed in violation of the conservation easement.

### **Is public access required?**

Public access is generally not required for a conservation easement.

### **What are the tax benefits of a conservation easement?**

The donation or sale at less than fair market value of a conservation easement to a qualified land trust is treated as a charitable gift of the development rights. The donation creates a charitable income tax deduction on the landowner's federal income tax return. In Colorado, the donation creates a tax credit against Colorado income tax. The maximum amount of the Colorado tax credit is \$375,000 for a \$750,000 donation. In addition, a conservation easement can lower the property value for estate tax purposes and may qualify the land for an additional partial exclusion from estate tax. Sometimes a conservation easement will be purchased; however, contrasted with a donation, this sort of transaction is treated as a taxable sale of real estate. If the purchase price is determined by an appraisal to be less than the value of the conservation easement—usually referred to as a “bargain sale”—the difference is a charitable donation.



Evans Ranch  
Evergreen,  
Colorado

## **How is a conservation easement valued?**

An independent appraiser sets the value of a conservation easement by determining the difference in the value of the property without the conservation easement and the value of the property after it is encumbered by the conservation easement. Known as the “before and after” approach, the value of the conservation easement is the difference between the property value before the conservation easement is placed on the property and the value of the property after it is encumbered by the conservation easement.

For example, a 1,000-acre ranch near a resort community might be worth \$2,000 an acre. Some of that value reflects the value of the development rights, in other words, the potential to subdivide the property for residential or commercial development. After a conservation easement is placed on the property allowing only two additional home sites to be built on the 1,000 acres, the property may be worth only \$1,250 an acre for its use as a ranch and for the potential to develop two additional homes. The value of the conservation easement is the difference between the \$2 million property value before the conservation easement and the \$1.25 million after the conservation easement. In this case, the conservation easement would be worth \$750,000.





Trinchera Ranch  
San Luis Valley,  
Colorado

*Photo by John Fielder*

### **What are the income tax benefits of a conservation easement?**

Using the example above, if the conservation easement was entirely donated, the \$750,000 value of the conservation easement will be a charitable deduction against the landowner's federal income taxes. This type of charitable deduction may be used to offset up to 30% or 50% of the landowner's adjusted gross income in the year the gift is made. In certain years, farmers and ranchers may use the deduction to offset 100% of adjusted gross income. Any unused portion of the deduction may be used in subsequent years. The charitable deduction may be used to offset either ordinary income or capital gains.

In Colorado, a donation creates a credit against Colorado income tax of 50% of each dollar of value donated, up to a cap of \$750,000, which means the maximum credit provided will be \$375,000.

Any portion of that tax credit which is not used in the year of the gift may be carried forward and used to offset Colorado income taxes for up to twenty more years. Alternatively, Colorado law also permits the tax credit to be sold for immediate compensation, or permits the taxpayer to request a refund in years of a state revenue surplus. If a refund is claimed, the maximum amount of the total refund and the credit used to offset taxes is \$50,000 for easements granted on or after January 1, 2003.

### **What are the estate tax benefits of a conservation easement?**

Using the example above, the property will be valued for estate tax purposes at \$1.25 million rather than \$2 million. Estate tax rates remain the highest tax rates faced by the American taxpayer. In this example, the reduction in the value of the property by \$750,000 for estate tax purposes could save the heirs as much as \$235,000 to \$300,000 after the death of the landowner, depending on the size of the estate. Most importantly, it could mean the difference between the heirs having to sell the property to pay the estate taxes or keeping the property in the family.

In addition, if the easement qualifies under certain provisions of the Internal Revenue Code, then 40% of the value of the property remaining after the granting of an easement can be excluded from the value of the estate, up to a maximum exclusion of \$500,000. In our example, the remaining value of the property after the granting of an easement is \$1,250,000 and 40% of that is \$500,000. If this easement qualifies, then an additional exclusion from the estate of \$500,000 would be available.

### **Are conservation easements the only method available to reduce inheritance taxes?**

No. A special use valuation is another important tool available to persons inheriting land used in a family farming or ranching business. To qualify for a special use valuation, generally the farming or ranching property must make up at least 50% of the value of the estate and certain heirs must agree to continue the agricultural activity for 10 years, or pay an additional tax.

If the estate qualifies for a special use valuation, the land will be valued at its agricultural value, not its fair market value. The reduction in value is limited to \$1,000,000. It is possible to donate a conservation easement without violating the restrictions in the special use valuation rules against a sale or other disposition of the property for a ten year period.

### **Will a conservation easement prohibit all development?**

A conservation easement cannot permit non-agricultural commercial uses or industrial uses which are incompatible with preservation of the conservation values, but can allow additional residential home sites. The number of sites which could be reserved to the landowner will depend on various factors particular to each easement, including the size of the property and the proposed location of the residential units in relation to the conservation values to be protected. While the Internal Revenue Service regulations do not create a precise measure of the number of units which can be reserved, sufficient conservation values must be protected and other requirements complied with to qualify for a charitable deduction under the regulations.

### **Can a conservation easement be completed after the death of a landowner?**

Yes. The Internal Revenue Code provides that for certain properties which qualify, the estate may donate a conservation easement after the death of the landowner and obtain an estate tax deduction for the value of the easement. The Colorado Legislature passed a law with the leadership of Isaacson Rosenbaum's Conservation Law & Conservation Easements practice group, which makes it easier for a personal representative of an estate to convey such an easement. However, it is much better planning for a landowner who wishes the property to be encumbered by a conservation easement after their death, to provide for this in their will.

### **How does a conservation easement impact property taxes?**

A conservation easement will sometimes lower property taxes due to the reduced value of the property subject to the conservation easement. For Colorado agricultural properties of a certain size, a landowner is entitled to maintain agricultural classification after a conservation easement is placed on the property, even if agricultural use later ceases.

### **How does a landowner set up a conservation easement?**

All conservation easements must be written and structured to comply with a number of requirements, particularly regulations set by the IRS. It is important for a landowner considering a conservation easement to consult with an attorney familiar with this area of the law.

### **How can a conservation easement benefit public entities?**

Several possible benefits can accrue to a public entity through the use of a conservation easement. A donation of a conservation easement for the tax benefits available to the donor can also advance a public entity's open space goals, such as the protection of wildlife habitat or scenic views. Where a landowner is not interested in making a donation of a conservation easement, the purchase of an easement can advance public open space goals at a lesser cost than by a purchase of fee title, while keeping the property on the tax rolls and not requiring ongoing public maintenance. In conjunction with development proposals, while a required conservation easement will not qualify as a donation, the protection of the open space portion of a project will advance open space goals and can mitigate the impact of such development, while providing comfort to a community about the long-term protection of the open space.

### **For further information, call**

Bill Silberstein, Larry Kueter or Chris Jensen  
at 303.292.5656  
or visit us at [www.ir-law.com](http://www.ir-law.com)

## Representative Transactions

- Provided counsel to Forbes Trinchera Inc. in the conveyance of an 80,000 acre conservation easement in the San Luis Valley of Colorado.
- Represented landowners or land trusts in more than 900 conservation transactions covering nearly 900,000 acres, including the Mt. Powell Ranch in the Blue River Valley, the LaGarita Ranch on the Rio Grande, White Rock Farm on Boulder Creek, the Arapaho Ranch near the Indian Peaks Wilderness Area, the Last Dollar Ranch on the Dallas Divide, and the Centennial Ranch on the Uncompahgre River.
- Provided counsel for the Evans Ranch in Evergreen, Colorado, which remains one of the country's leading protective development preservation projects. The project involved protective covenants and conservation easements, the latter of which are held by American Farmland Trust.
- Coordinated legal efforts for Phantom Canyon Ranch in Phantom Canyon, Colorado, a protective development with a conservation easement held by The Nature Conservancy.
- Advised clients in regard to the Upper Elk River Valley, Routt County, Colorado, a valley-wide conservation plan with multiple property owners.
- Advised a non-profit conservation organization on a pollution settlement agreement with the City and County of Denver resulting in the creation of a new wildlife preserve and permanent open space along Sand Creek.
- Assisted the Plains Conservation Center in its negotiations for the sale of open space and the relocation of the Plains Conservation Center.
- Represented a landowner in the annexation of property to Crested Butte and the grant of a conservation easement on adjoining land.
- Provided counsel to a national conservation organization in the purchase, protection and resale of a 4,000 acre ranch near Steamboat Springs.
- Represented the Colorado Cattlemen's Agricultural Land Trust in their creation and in the review of numerous donated easements and advised them on organizational matters.
- Structured and closed numerous sales to conservation buyers.

## William M. Silberstein



*Bill Silberstein is recognized as a leader in land conservation law and the preservation of open space. He serves as counsel to Colorado Open Lands and Colorado Coalition of Land Trusts. Since 1981, he has represented many landowners and other local and national land conservation organizations in transactions resulting in the preservation of hundreds of thousands of the most beautiful acres in the Rocky Mountains. He is a frequent speaker on conservation easements and the tax aspects of open space preservation.*

*As a member of the firm's Conservation Law & Conservation Easements practice group, Bill works together with the firm's tax department in structuring conservation-oriented business and estate plans. His team approach brings together accountants, appraisers, land planners, and biologists to achieve the client's conservation objectives. He has helped land trusts in the areas of non-profit corporation organization and obtaining tax exempt 501 (c)(3) charitable status.*

*Bill served on the Board of Directors of the Land Trust Alliance, and is a member of the Denver and Colorado Bar Associations. He received his law degree from the University of Colorado, where he was an intern with the National Wildlife Federation and a casenote editor of the Law Review. As an undergraduate, he attended the University of Colorado, where he received his bachelor's degree in environmental conservation. He has served as department chair of Isaacson Rosenbaum's Real Estate & Sustainable Development practice area and has been named as one of the state's top attorneys in Colorado Super Lawyers®.*

*Bill Silberstein can be reached at 303.292.5656 or [bsilberstein@ir-law.com](mailto:bsilberstein@ir-law.com)*

## Lawrence R. Kueter



*Larry Kueter serves as legal counsel to the Colorado Coalition of Land Trusts, the Colorado Cattlemen's Agricultural Land Trust, Colorado Open Lands, and the Plains Conservation Center, and represents other landowners and land trusts in the Rocky Mountain West in creating conservation easements and developing conservation strategies. He currently serves as Chairman of the Land Trust Accreditation Committee and is on the Board of Directors of the Land Trust Alliance.*

*On behalf of the Colorado Coalition of Land Trusts, Larry has played a key role in obtaining approval of legislation to clarify property tax burdens on conservation easements, to provide a tax credit for conservation easements, and to permit post-mortem donations of conservation easements. He is a frequent speaker at statewide and regional conferences and has lectured on conservation easements at the annual conference of the Land Trust Alliance.*

*He has considerable experience in the area of municipal real estate law, including re-zoning approvals, subdivision approval, annexations, and development agreements. Before joining the firm in 1981, Larry spent four years with the City of Aurora where he was responsible for all legal matters related to annexation, zoning, subdivision, and right-of-way matters for the city.*

*Larry received his law degree from the University of Denver. He has a master's degree in economics from Wayne State University and received his bachelor of science degree from the University of Wisconsin. He is a member of the Denver and Colorado Bar Associations.*

*Larry Kueter can be reached at 303.292.5656 or [lkueter@ir-law.com](mailto:lkueter@ir-law.com)*

## Chris Jensen



*Chris Jensen is a member of Isaacson Rosenbaum's Conservation Law & Conservation Easement practice group. He has represented landowners, land trusts and land conservation organizations in all aspects of complex conservation transactions across Colorado and in other western states. He also advises landowners and land trusts on the state and federal tax aspects of land conservation, including responding to IRS audits of conservation easement donations before the IRS, United States Tax Court and United States District Court.*

*Prior to attending law school, Chris worked for national environmental groups, including the National Audubon Society, the Environmental Defense Fund, and the Nature Conservancy, where he helped conduct land conservation projects in several western states.*

*A Colorado native, Chris received his law degree from the University of Denver Sturm College of Law, and a bachelor's degree in philosophy and environmental studies from the University of Colorado at Boulder. He has presented on the tax treatment of conservation easements at local and national conservation easement seminars.*

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