



GAINING GROUND

Landowner Guide

The information contained in this Guide is intended to be used for general reference. Utah Open Lands does not provide this information in place of legal or tax counsel and strongly suggests all landowners considering a conservation solution for their property seek legal and tax advice. Included is guidance on Utah Open Lands' process regarding a conservation transaction, common tax information of conservation easements and gifts, and a worksheet to aid landowners in completing a transaction.

Organization Mission

Utah Open Lands (UOL) is a non-profit, tax-exempt organization whose mission is to assist landowners in protecting the scenic, wild-life, historical, agricultural, and recreational values of open land in the state of Utah for the enjoyment of present and future generations. Utah Open Lands is a non-governmental, non-political conservation organization, which utilizes educational outreach, donations of land and conservation easements, acquisitions of land and easements, and conservation buyers and investors to accomplish its goals of tangible land protection. By preserving open spaces, Utah Open Lands aids communities, investors, and government leaders interested in protecting Utah's quality lifestyle.

History

Utah Open Lands incorporated in 1990, in response to the overwhelming pressures of growth and development in Summit County. In 1995, as these pressures increased statewide and the importance of open space protection became even more apparent and urgent, the organization became a statewide land trust with the mission of serving as a local, regional and state resource for land protection.

Conservation Methods

The hallmark of Utah Open Lands' innovative tools is the conservation easement. A conservation easement is a binding, legal agreement entered into mutually and voluntarily by a landowner and Utah Open Lands for the purpose of protecting the special features of a property by restricting development. The land remains in private ownership while Utah Open Lands acts as conservator ensuring the protection of the conservation values. The landowner can continue to live on and use the property, sell it, or pass it on to the next generation. With the passage of the Farm and Ranch Protection Act there are additional estate tax as well as income tax benefits available. The donation of a conservation easement may result in a charitable deduction for the donor.

Updated 2017

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Jay Grant Thorley Ranch

Acreage: 2550 Location: Washington County Date: 2008

The Thorley Property is part of the highlands between Cedar Breaks National Monument (Cedar Breaks is 9 miles to the northeast of the Property) and Zion National Park (Zion is 6 miles to the southwest of the Property). It is up to 1000 feet higher than adjacent valley bottoms, and is ringed to the west, south, and east by rugged valley walls and cliffs. It is adjacent to O'Neil Gulch and drains into Deep Creek and Crystal Creek, thus forming a part (1.1% of the land area) of the North Fork Virgin River Watershed. It is superbly scenic. In addition, habitat on and near the Property is appropriate for Mexican spotted owls (a federally-listed threatened species) and California condors (a federally-listed endangered species and one of the rarest bird species in the world), which have been documented in the area of the Property. The Property is currently a working sheep and cattle ranch. It has been continuously owned by the Thorley Family for about a century. Utah State University and Southern Utah University have conducted research on the Property for about 20 years, and research is currently ongoing at this site. Dominant vegetation consists of interspersed Gambel oak woodlands, sagebrush steppe, mature aspen forests, and relatively extensive grass patches. Wildlife on the property includes abundant mule deer and elk as well as mountain lions. This protected property is in one of the few places in the world where California condors can currently be seen in the wild. About 50 condors are known currently to stay in the area during the summer months, foraging and roosting on and around the high plateaus. The Property provides relatively open shrub steppe and grassland areas that are ideal for condors to forage. The cliffs and rims around the high plateau provide excellent roosting sites. If the condors eventually nest in Utah, they will pick a cave or crevice in cliffs like those on and adjacent to the Property. Conservation of the Jay Grant Thorley Ranch allows management choices that help to reduce major threats to condors in the wild.

Professor Valley Ranch

Acreage: 119 Location: Grand County Date: 2009

Professor Valley Ranch has protected its irrigated agricultural land including a pistachio orchard and other fruit and nut trees as well as natural shrubland, and riparian habitat along Professor Creek and irrigation canals. The open land of the Property forms a substantial part of the remarkable viewscape from the Upper Colorado River Scenic Byway (State Highway 128). The green field and trees provide a sense of the agricultural traditions of early settlement as well as preserving attractive open space. Irrigated crops and adjacent areas on the Property also provide resources for wildlife, including both large and small mammals, birds, reptiles, amphibians, and invertebrates. Current management of the hayfields on the Professor Valley Ranch preserves many natural values. For example, no herbicides have been used for the past four years and the landowner knowingly shares irrigated resources with wildlife including mule deer that nightly move onto the hayfields. The Conservation Easement helps to ensure that management of the Ranch in the future will agree with the desires of the current, conservation-minded landowners.

Perkins Flat

Acreage: 190 Location: Emigration Canyon – Salt Lake County Date: 2005

Along Emigration Canyon Scenic Byway, Perkins Flat is one of the last remaining undisturbed meadows that visitors view. International and national visitors who travel along the byway can glimpse what many historians consider to be the last camp for the Mormon pioneers prior to entering the Salt Lake Valley. Additionally, the protection of the wetlands located on five acres of the meadow will aid in the water quality of the entire Jordan River watershed. In partnership with Salt Lake County, the property will be restored and enhanced to increase the watershed value of this land.

Hi Ute Ranch

Acreage: 200 Location: Summit County Date: 2004

The preservation of this property, its proximity to development, and its location along one of the West most traveled corridors, makes this project one of the most significant conservation projects to occur in Summit County and perhaps Utah. In stark contrast to the big box commercial and apartment complexes, which have sprung up on its borders, the Hi Ute Ranch is a last vestige of significant open space in Summit County. Remaining unaltered from the pioneer era, through two world wars and most recently the 2002 Olympics. The Ranch is now safe from being lost to a jumble of asphalt and concrete, forever.

Castleton Tower

Acreage: 221 Location: Grand County Date: 2003

The Castleton Tower Preservation Initiative, a hard fought two-year campaign to save 221 acres of desert which encompasses the 400-foot spire, garnered international attention. Profiled in the book *Fifty Classic Climbs of North America*, Castleton Tower is arguably one of the most famous desert formation in the world, revered by climbers and photographers alike. When the Tower's base lands were threatened by development, a number of partners joined Utah Open Lands to fight for preservation. Individuals, the outdoor industry, The George S. and Dolores Doré Eccles Foundation and other entities raised \$640,000 to protect the Tower's base lands, campground and public access.

Provo River Corridor

Acreage: 17 Location: Summit County Date Completed: 2003

The beautiful Provo River corridor embraces blue-ribbon trout waters and vital habitat for numerous wildlife species, including the rare Western spotted frog. When sale signs went up along the corridor property in Summit County, Utah Open Lands merged the landowners' conservation ethics with funds from the Army Corps of Engineers and other organizations. Utah Open Lands negotiated a bargain sale and purchased the property in the spring of 2003.

Hidden Hollow Nature Preserve

Acreage: 3 Location: Salt Lake County Date: 2000

After KOPE – Kids Organized to Protect the Environment – cleaned up debris and garbage from this urban park in downtown Salt Lake's Sugarhouse District, they approached Utah Open Lands with the intention of permanently preserving this island of open space as a natural oasis. In early May of 2000, Utah Open Lands accepted a conservation easement donation from Salt Lake City Corporation to ensure that Hidden Hollow will be protected for kids (and adults) forever.

American West Heritage Farmland Preserve

Acreage: 21 Location: Cache County Date: 2000

Maintaining a base agricultural acreage is central to any farming operation. The Jensen Historical Farm, now home to the American West Heritage Center, is a demonstration of this principle as and maintaining its agricultural viability, the American West Heritage Center asked Utah Open Lands to step in to purchase and safeguard this 21 acre alfalfa field at the entry corridor to Logan and Cache Counties. UOL completed the purchase and conservation easement in July of 2000 with the intention to transfer fee title ownership of the parcel to the Center by the end of 2001. The conservation easement will be transferred to Utah State University, with co-enforcement and monitoring powers held by Utah Open Lands, in order to insure that the land is protected in perpetuity.

Peaceful Valley Ranch Reserve *Acreage: 7,300 Location: Morgan County Date Completed: 2000* The Peaceful Valley Ranch represents a classic western landscape: rolling hills covered in scrub oak, rich riparian areas with large cottonwood stands, and an historic

Accomplishments *continued*

Peaceful Valley Ranch Reserve *Continued*

homestead complete with farmhouse, barn, and a restored Pony Express station – all of which has been permanently protected through a conservation easement. The protection of this 7,300 acre ranch in June 2000 was part of a two-year campaign that combined the efforts of numerous partners. State and Federal officials matched significant donations by the landowners and many Utah private charitable foundations. In addition to the financial contributions, many Utahans worked tirelessly to preserve this historical, scenic and wildlife treasure. Located just 6 miles east of the Jeremy Ranch subdivision in East Canyon, this historic mountain ranch contains large portions of watershed for East Canyon Reservoir and is home to eight stream crossings on the historic Mormon Pioneer Trail. In addition to its historic values, Peaceful Valley Ranch contains significant wildlife habitat for elk, mule, deer, moose, mountain lion, bobcat, red fox, bald and golden eagles, and American kestrel.

The Gene and Deane Wheadon Farmland Preserve

Acreage: 75 Location: Salt Lake County Date: 1997 For generations, agriculture has been the mainstay of many Utah communities. During recent years, however, fruit orchards and alfalfa fields have given way repeatedly to shopping centers and sprawling residential development. In fact, Utah's prime farmlands are disappearing at a rate of two acres per day. Fortunately, there are landowners like Gene Wheadon of Draper who have the vision and passion to buck that trend. Gene Wheadon could have sold the development rights to his 756-acre parcel for a whopping \$3 million. Instead, he chose to leave his farm as an open land legacy for his family, the citizens of Draper, and the State of Utah.

Questions and Answers

What is Utah Open Lands? Utah Open Lands (UOL) is a land trust, one of roughly 1,700 land trusts throughout the nation. A land trust, like UOL, is a non-profit, tax-exempt, public charity identified under a special section of the Internal Revenue Service Code, which allows the organization to hold conservation easements. As a land trust, UOL assists landowners in the voluntary preservation of their land, protecting its scenic, wildlife, historic, agricultural, and /or recreational values. Utah Open Lands is a non-governmental, non-political community based organization which utilizes educational outreach, donations of land and conservation easements, acquisitions of land and easements, and conservation buyers and investors to accomplish its goal of tangible land protection. By preserving open spaces, Utah Open Lands aids communities, investors, and government leaders interested in protecting Utah's quality of life.

What is a Conservation Easement? A conservation easement is a legally binding agreement entered into voluntarily and mutually between a landowner and Utah Open Lands, protecting the land from some or all future development in perpetuity. Utah law provides landowners with a choice of easements coinciding with the conservation resources in need of protection on the property. The forms of conservation easements include: agricultural, historical, ecological, public recreational, or scenic. A conservation easement may protect one or all of the aforementioned values. A conservation easement may be purchased by a conservation organization at its full fair market value, purchased at a fraction of its fair market value, or donated by the landowner to a conservation organization.

Why Would a Landowner Donate a Conservation Easement? Typically the reason for donating a conservation easement is the landowning family's love of the land. When donated to a qualified public charity like Utah Open Lands, conservation easements constitute a charitable donation and consequently have favorable tax consequences for the landowner making the gift. These tax benefits range from income tax deductions to estate tax benefits.

How is the Value of a Conservation Easement Determined? The value of a conservation easement is determined by a qualified appraisal. This appraisal must meet the new qualifications established by the IRS governing conservation easement transactions as of 2006.

Does a Conservation Easement infringe on Private Property Rights? No. Actually a conservation easement enhances private property rights as it allows families a choice when faced with development pressures, which could force the sale of the property. The right of a landowner to preserve his or her land is equally valid as is the right to develop it. Again, an easement is a voluntary agreement entered into mutually, which allows for a landowner to continue owning the land, living on the land, working the land, and passing it on to the next generation or selling it to a conservation minded buyer.

Is a Conservation Easement Binding on Successors? If "Yes", Does that Infringe on My Personal Property Rights? Yes. The conservation easement is binding on successive owners, but No, it does not infringe on personal property rights any more than any other significant deed restriction or development of the property would. For many landowners the decision to develop the land locks in the fate of a family heirloom for more than a conservation easement. A conservation easement is evident on the plat. It restricts future uses while maintaining current uses forever so the status of what the successive owner is either inheriting or buying is clear.

Conservation Easement Process

Site Visit

In order to determine whether a piece of property has conservation potential, a site visit must be conducted. An initial site visit will be conducted by a Utah Open Lands staff member. Other visits to the property will be required in the future, and we hope this will not be an inconvenience for you.

Current Conditions / Baseline Documentation Report

In accordance with IRS regulations and in compliance with Utah Open Lands monitoring guidelines, adequate documentation of the current conditions and conservation values associated with the property must be established. The IRS stipulates that the landowner may provide this document to the Grantee organization, or our organization can put the necessary documents together. This report will consist of maps, pictures and a narrative description of the parcel. All parties must agree at the signing of the conservation easement that the baseline document serves as an accurate representation of the property. This baseline document, serves as the basis for yearly, semi-annual, or in some instances, a quarterly monitoring by the Grantee (UOL) to ensure that the terms of the conservation easement are enforced.

Funding

Utah Open Lands believes strongly in providing fair value for conservation easements we purchase. However, funding for Conservation Easements is highly competitive and there are very few available funds. If property owner is considering seeking funding it should be known that this process will take longer and that a donation of a portion of the value may aid the funding process. The determination of the value of a conservation easement or fee acquisition is based on a certified conservation appraisal.

Public Benefit

The property must also be considered in terms of its benefits to the public. This does not mean public access to the property,

rather an evaluation by Utah Open Lands of the conservation values based on IRS and organizational criteria to assert the public benefits of the eventual preservation.

Conservation Easement draft

Utah Open Lands staff or the landowner's attorney can do a draft of the conservation easement. Once the easement is in draft stage, the landowner and Utah Open Lands staff will review the document, suggesting changes insuring that the easement achieves the preservation of the conservation resources on the property and the landowners intent. Both the landowner's attorney and Utah Open Lands' attorney review a final draft. Utah Open Lands advises every landowner to seek independent legal counsel.

Title Insurance

As with any land transaction, it is important that the landowner verify that he / she has clear title to his / her property. For this purpose, we require that the landowner provide us with title insurance or a title report. This is also critical for determining if there are any encumbrances which could effect the granting of a conservation easement.

Mineral Interests

In some instances, landowners may or may not be aware that they do not own the mineral estate of their property. This can be a critical issue in any tax value a landowner is interested in pursuing. If the mineral rights have been severed from the property after 1973, the landowner must obtain a geologist report indicating that the presence of any mineral of monetary interest, which could be extracted from the property, is "so remote as to be negligible." Please contact Utah Open Lands as soon as possible if this is the case.

Conservation Easement Selection Criteria

The following criteria, procedures and policies shall guide Utah Open Lands with respect to the acquisition and stewardship of conservation easements for the permanent protection of selected open space within Utah.

Utah Open Lands will actively target lands in Utah that will further the stated goals of protection and preservation of open space.

Utah Open Lands will select for protection only those lands that qualify under at least one of the following categories:

- Open space, including farmland and forest land, that is either preserved for the scenic enjoyment of the general public or protected pursuant to clearly delineated federal, state or local governmental conservation policy and that will yield a significant public benefit;
- Historically important land areas;
- Archeological or cultural aspects;
- Natural resource protection;
- Relatively natural habitat for fish, wildlife, plants or similar ecosystem;
- Maintain or enhance air or water quality; or
- Availability for agricultural, forest, recreational or open-space use;
- Outdoor recreational or educational use by the general public;

Conservation easements acquired by Utah Open Lands must result in a significant public benefit. In determining whether a transaction will result in a significant public benefit, the following factors shall be considered:

- uniqueness of the property to the area;
- intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development);
- consistency of the proposed open space use with public programs (whether federal, state or local) for conservation in the region, including programs for outdoor recreation, irrigation or water supply protection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in, or related to, a government approved master plan or land management area;
- consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land protected by conservation easement or fee ownership by nonprofit conservation organizations in the close proximity to the property;
- likelihood that development of the property would lead to or contribute to degradation of the scenic, natural or historic character of the area;
- opportunity for the general public to use the property or to appreciate its scenic values;
- importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area;
- likelihood that Utah Open Lands or another land conservation organization or agency will protect additional and nearby or adjacent open space lands similar to the subject property;
- population density in the proximity of the property; or
- consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.



Property acquired must be of sufficient size that its conservation values are sustainable even if adjacent properties are developed, or it must be contiguous to other protected property such that the sum total of protected acreage shall sustain the conservation values of all of the protected properties.

Utah Open Lands will select only those properties that permit responsible stewardship under the guidelines established and that can be adequately protected at a reasonable cost and level of effort, taking into consideration the existing and projected available resources (e.g., funds, staff, volunteers) of the land trust.

Typical Conservation Easement Transaction Outline

The following is an outline of a typical conservation transaction.

- I. Initiating the process
 - a. Conversation with Utah Open Lands representative
 - b. *Landowner Guide's* Conservation Worksheet completed and submitted
 - c. Site visit of the property
 1. Relevant maps, photos, other reference material regarding the property provided by landowner
 2. Initial photos for baseline documentation—UOL staff
- II. Utah Open Lands Project Consideration
 - a. Conservation criteria / analysis
 - b. Conservation purposes test / analysis
 - c. Public Benefit of transaction consideration / analysis
 - d. Funding constraints consideration / analysis
 - e. Letter of engagement signed by landowner
 - f. Board review and preliminary approval
- III. Conservation Transaction Documents
 - a. Conservation Easement Draft
 - b. Title Report
 - c. Appraisal
 - d. Baseline Documentation
- IV. Finalizing the Transaction
 - a. Board approval and resolution
 - b. Stewardship Funding in place
 - c. Closing and recording of appropriate documentation
 - d. Federal Form 8283



Baseline Inventory Checklist

Owner Acknowledgement of condition

This is an IRS requirement if the easement is a gift for which a deduction will be claimed. The regulations require that this statement must clearly reference the baseline data. It must say, “in substance...this natural resources inventory is an accurate representation of [the protected property] at the time of the transfer.” The statement must be notarized and signed by both grantor and representative of grantee.

Background Information

- Ownership information (name, address, and phone number of property owner)
- Historical information on the donation /acquisition (brief chronological description of events that led to the protection of the property)
- Summary of easement provisions (specific prohibitions, restrictions, retained rights, as derived from the language of the easement document)
- Purpose of easement
- Evidence of the significance of the protected property, as established either by government policy (include copies of documents) or by the long-term protection strategy developed by the grantee
- Corporate or agency resolution accepting gift (minutes of the meeting at which a gift is accepted or acquisition approved adequate)

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Legal Condition

Some grantees include in the baseline data file:

- A copy of the signed, recorded easement document
- An assessor's parcel map
- A clear title statement or preliminary title report, noting any liens against the property that could compromise its natural qualities or invalidate the easement
- Copies of any other relevant easements or water rights associated with the property

Ecological Features

- An inventory of rare, endangered, and / or threatened species
- Reports from wildlife biologists or other specialists that document the status of significant natural elements
- A very general description of plant cover, soils, etc.

Include only those ecological features that the easement seeks to protect.

Agricultural Values

- Intensity of grazing (can be determined by experts and expressed in "animal units" per acre)
- Level of pesticide use (The American Farmland Trust usually provides that the landowner must comply with all applicable federal, state, and local laws and regulations governing application of pesticides, herbicides, and other chemicals)
- Soil quality (The American Farmland Trust encourages landowners to ask the Soil Conservation Service to prepare a soil conservation plan; this serves as the easement's benchmark for acceptable practices or erodible land)

Grantees of easements over productive agricultural lands typically set a level of "acceptable" pesticide or herbicide use – a subject of constant debate. Another difficult task for agricultural easement grantees is defining when grazing becomes overgrazing. The local office of the Soil Conservation Service and similar local agencies may be able to help.

Scenic Features

- Official policies citing property's scenic value
- Number of people who frequent nearby public places (roads, trails, parks) from which they can view property

Man-Made Features

- Improvements (structures, buildings, trails, fences, wells, power lines, pipelines, irrigation systems, etc.)
- Recreation, tourist attractions
- Trespass damage and disturbed land (stray animals, introduced species, evidence of vehicular trespass, etc.)

Photographs

- Aerial photos, if appropriate (have aerial photos enlarged, if necessary, to correspond to the scale of maps included in the baseline data)
- On-site photographs (Be sure to record key photo points, and sign and date all photos)

Maps

- A state map showing easement location
- A 8^{1/2}" x 11" section of a local road map showing easement location
- The largest-scale US Geological Survey topographical map available (usually a scale of 1:24,000, called a 7^{1/2} minute scale) showing easement boundaries

Surveys

Surveys generally are not required, but they may be required, especially if a property is smaller.

What is the Stewardship Fund?

The Stewardship Fund is a Utah Open Lands Fund specifically designated for use to monitor and protect lands we hold under our stewardship either in fee or as protected by conservation easements.

Why is it needed?

With every conservation easement, Utah Open Lands accepts the responsibility to monitor, enforce and defend that easement forever. The perpetual costs associated with monitoring each easement are a significant and necessary liability to Utah Open Lands, necessary because this is what we do and this is how land is preserved in perpetuity. Consequently, the liability is not only expected but also welcomed and the associated financial responsibilities are taken very seriously.

How Does the Fund Work?

Under IRS guidelines a conservation easement gift must be accompanied by a baseline documentation for the property as well as a commitment by the qualifying entity that it has the requisite resources to forever enforce and protect the conservation easement. A Stewardship contribution to Utah Open Lands includes funding for the Stewardship Fund as well as funding necessary to prepare the baseline documentation and other documentation required prior to the recordation of the conservation easement. Therefore a contribution to Utah Open Lands for stewardship is a one time contribution that includes the upfront costs of the baseline documentation as well as the needed resources for perpetual preservation.

The purpose of the Stewardship Fund is twofold: to provide monies to monitor lands protected by conservation easements and to provide financial ability to defend our lands and conservation easements against lawsuits, if any should ever occur. Stewardship endowments from every conservation easement donation are pooled together into one account. Currently, the interest earned on this account is reinvested to build the principal. Our goal is to build a fund to ensure our protected lands in perpetuity. The interest will eventually be sufficient to cover the projected annual monitoring expenses for each easement. The corpus will continue to be held in reserve to be used in legal defense of our easements.

We hope to never have to use the corpus and intend to minimize the risk of any lawsuits through careful and consistent monitoring, general conservation education and good landowner relations. UOL's annual operating fund currently covers its stewardship expenditures in order to build up the fund as quickly as possible.

How Are the Funds Raised?

Utah Open Lands is always working to raise money for our stewardship fund. Without Stewardship dollars in place the Utah Open Lands Board may not approve the final transaction. It is our policy to ask easement donors to consider a gift to Utah Open Lands' stewardship fund. Utah Open Lands also factors stewardship costs into every project we work on and request that foundations and donors give in part to that fund when we are protecting a beloved community landscape. In

addition, UOL fundraises specifically for the stewardship fund annually from individuals, foundations, and others.

How are Stewardship Costs Calculated?

Factors considered when calculating a stewardship endowment fund:

- size and accessibility of the parcel – specific number of acres restricted by conservation easement and number of miles required to drive to and from the parcel and to drive the entire parcel;
- types of adjacent land uses;
- terms of the restriction, including permitted uses and anticipated frequency of review and approval;
- number of reserved home sites;
- staff time to monitor and write the baseline documentation report;
- photographs

It has been Utah Open Lands' and other land trusts' experience that reserved future home sites add significantly to the amount of stewardship staff time required for a property. Home sites existing at the time an easement is conveyed also increase the staff's or volunteer's time on the property. Easements with no reserved or previously existing home sites require significantly less stewardship time and money.

It is Utah Open Lands' goal that annual stewardship costs will eventually be covered by the stewardship fund. We estimate that an annual rate of 4% will be adequate to cover the annual stewardship costs. Land trusts have found that the size of a protected parcel does not significantly influence the annual stewardship costs, with the exception of a few fixed costs which are calculated at a rate of either \$13 - \$25 per hour, depending on whether a staff member, intern, or volunteer is doing the site visit and monitoring. The endowment, calculated using 4% annual interest, is the gift request made to a landowner considering a conservation donation.

Is a Stewardship Gift Required by Utah Open Lands?

The requested stewardship amount is by no means a requirement of a conservation easement gift. Some landowners may not have the ability to contribute an easement as well as a stewardship gift. However, it is strongly encouraged as a means of ensuring that an easement, and consequently the land, is protected in perpetuity. Some easement donors want to help by giving the entire amount up front while others choose to make a pledge to pay the requested amount over several years.

Can Anyone Make a Contribution to Utah Open Lands' Stewardship Fund?

Certainly. In addition to easement donors, there are many people who feel strongly about stewarding and protecting a land trust's conservation easements, and many, if asked appropriately, might be willing to make a gift to the stewardship fund. Since Utah Open Lands is recognized by the IRS as a 501(c) 3 charitable, non-profit organization, all donations are tax deductible.

For landowners, donating a conservation easement is a way to protect places they love. It's also a major financial decision. When landowners donate a conservation easement, they give up part of the value of their property — often their family's biggest asset. Tax incentives offset some of that loss in property value, making conservation a viable option for more landowners.

How to Use the Federal Conservation Tax Deduction

One of the most important incentives is the federal conservation tax deduction, which allows landowners to deduct all or part of the value of a donated easement from their taxable income. In 2015, Congress made permanent the federal tax incentive for conservation easement donations, helping thousands of landowners conserve their land.

If you own land with important natural or historic resources, donating a voluntary conservation easement (also called conservation agreement) can be one of the smartest ways to conserve the land you love, while maintaining your private property rights and possibly realizing significant federal tax benefits. The conservation tax incentive:

- Raises the deduction a donor can take for donating a conservation easement from 30 percent of his or her income in any year to 50 percent;
- Allows qualifying farmers and ranchers to deduct up to 100 percent of their income; and
- Extends the carry-forward period for a donor to take tax deductions for a voluntary conservation agreement from 5 to 15 years.

These changes apply to donations made at any time in 2015 and to all donations made after that. This is a powerful tool for allowing modest-income donors to receive greater credit for donating a very valuable conservation easement on property they own. For land trusts, this translates to the possibility of protecting much more land through the use of conservation easements.

Frequently Asked Questions

What Is a Conservation Easement?

A conservation easement is a legal agreement between a landowner and a land trust or government agency that permanently limits uses of the land in order to protect its conservation values. It allows landowners to continue to own and use their land, and they can also sell it or pass it on to heirs.

When you donate a conservation easement to a land trust, you give up some of the rights associated with the land. For example, you might give up the right to build additional structures, while retaining the right to grow crops. Future owners will also be

bound by the easement's terms. The land trust is responsible for making sure the easement's terms are followed.

Conservation easements offer great flexibility. An easement on property containing rare wildlife habitat might prohibit any development, for example, while an easement on a farm might allow continued farming and the addition of agricultural structures. An easement may apply to all or a portion of the property, and need not require public access.

Qualifying for a Tax Deduction

A landowner sometimes sells a conservation easement, but often easements are donated to a land trust. If the donation benefits the public by permanently protecting important conservation resources, and meets other federal tax code requirements, it can qualify as a tax-deductible charitable donation. Easement values vary greatly; in general, the highest easement values result from tracts of developable open space under intense development pressure. In some jurisdictions, placing an easement on your property may also result in property tax savings. To find a land trust near you to discuss your options, please visit www.findalandtrust.org ([link is external](#)).

How Does the Expanded Tax Incentive Work?

Can you give me an example of the difference the new change makes?

Under the previous rules, a landowner earning \$50,000 a year who donated a \$1 million conservation easement could take a \$15,000 deduction for the year of the donation and for an additional 5 years — a total of \$90,000 in tax deductions. The new rules allow that landowner to deduct \$25,000 for the year of the donation and then for an additional 15 years. That's a total of \$400,000 in deductions. If the landowner qualifies as a farmer or rancher, he or she could take a maximum of \$800,000 in deductions for the million dollar gift.

Can anyone deduct more than the value of his or her gift?

One can never deduct more than the fair market value of the gift. This change simply allows landowners who previously could not deduct the full value of their gift to deduct more of that value.

Who qualifies as a farmer or rancher?

The new law defines a farmer or rancher as someone who receives more than 50 percent of his or her gross income from "the trade or business of farming." The law references Internal Revenue Code (IRC) 2032A(e)(5) to define activities that count as farming. Specifically, those activities include:

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- cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training and management of animals) on a farm;
- handling, drying, packing, grading, or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant, or operator of the farm regularly produces more than one-half of the commodity so treated; and
- planting, cultivating, caring for or cutting of trees, or the preparation (other than milling) of trees for market.

For an easement to qualify for the special treatment, it must contain a restriction requiring that the land remain “available for agriculture.” The qualified farmer or rancher provision also applies to farmers who are organized as C corporations. Additionally, Alaska Native Corporations are eligible under the same terms as farmers or ranchers.

Do these changes apply to gifts of land?

This expanded incentive does not apply to gifts of land in fee; it only applies to gifts that qualify under IRC 170(h)(2), such as conservation easements. Landowners considering donating their land should consult with an attorney to determine whether they should consider changing the structure of their gift to take advantage of this new incentive.

Does this incentive only apply to conservation easements?

The expanded incentive applies to all donations covered in IRC section 170(h)(2), which includes donations of the entire interest of the donor other than a qualified mineral interest; a remainder interest; or a permanent conservation or historic preservation easement.

What is the timeline for this expanded incentive?

The incentive applies to all easements donated after December 31, 2014.

What other restrictions apply?

Conservation easement donations are subject to the same restrictions as they were before. For example, easements must meet the “conservation purposes” test defined in the existing law; they cannot be donated as part of a “quid pro quo” agreement where the easement was given in exchange for something else, such as a building permit; and they must be donated to a qualified organization — a governmental unit or a publicly supported charity that has “a commitment to protect the conservation purposes of the donation, and...the resources to enforce the restrictions.”

Will donors who use this provision be audited?

Taking advantage of this new law should not affect one’s likelihood of being audited. All donors should note, however, that the IRS does pay close attention to high value donations of property — including donations of conservation easements.

That makes it particularly important for donors and their advisors to know and follow the law; to utilize a reputable professional appraiser who has experience in the appraisal of conservation easements; and to donate to a well-established, reputable land trust that has adopted and implemented [Land Trust Standards and Practices](#).

Recent Rules Affecting Easement Donors

How do other laws affect easement donations?

A 2006 law (PL109-280) redefines who is a “qualified appraiser,” so appraisers need to show donors that they are qualified under the new law, which states that a qualified appraiser must “demonstrate verifiable education and experience in valuing the type of property subject to the appraisal.”

The 2006 law also tightened the rules for easements on “certified historic structures.” If you are protecting a property that includes such a structure, new regulations, including a filing fee and specific appraisal requirements may apply to you.

Roles and Responsibilities

Potential easement donors should know that donating a permanent conservation easement is a big commitment requiring careful consideration and independent legal advice.

Donating a conservation easement requires a working partnership with a land trust — and time for careful drafting of documents and maps, baseline documentation and a professional appraisal. Landowners should understand that a land trust may decline to accept a donation that does not meet both the legal requirements and the land trust’s own specific charitable mission and strategic plan. In addition, land trusts will want to see the appraisal before accepting your gift.



This tax incentive information is not meant to provide legal counsel or advice. To obtain a correct calculation, individuals should consult their tax attorney.

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Appraisers

Currently Utah Open Lands is requiring that any conservation easement donations be accompanied by a Certified Conservation Easement Appraisal. The following list includes appraisers Utah Open Lands has worked with in the past not necessarily those with certification.

Newmark Knight Frank
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Tyler.Dustman@Cushwake.com

LECG,
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5107 S 900 E # 200
Salt Lake City, UT 84117
(801) 281-4600

Jonathan Cook
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Intermountain Valuation Group
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Valuation Consulting Group
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Gary R. Free, MAI, SRA
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