



CENTER FOR DESERT ARCHAEOLOGY

Preserving the Places of Our Shared Past

Conservation easements are one of the most significant land protection tools available to private landowners. The goal of the Center for Desert Archaeology's conservation easement program is to assist landowners who want to preserve archaeological sites on their land permanently. Landowners can usually control what happens on their land as long as it belongs to them, but have no way to ensure what will be done by future land owners. Government agencies and private foundations can afford to acquire and preserve only a small number of properties, so private landowners must usually find their own ways to protect archaeological sites on their land. The most effective way to do this without giving up the land is through a conservation easement.

What is a conservation easement?

Ownership of a piece of property may best be described as a "bundle of rights." These rights include the right to occupy, use, lease, sell, and develop the land. A conservation easement involves the exchange of one or more of these rights from the landowner to someone who does not hold title to the property ("the holder"). The conservation easement grants to the holder certain rights regarding the use of property for specified conservation purposes while the title to the land and all other uses of the property remain with the private property owner. Typically the rights granted to the holder are the right to restrict certain uses that the landowner otherwise has the right to exercise. All easements are individually crafted by the landowner and the easement holder (in this case the Center for Desert Archaeology) to meet their mutual goals. Each easement is tailored to the unique situations of each landowner and can, therefore, vary as to what future uses are restricted.

What is an archaeological conservation easement?

An archaeological conservation easement is designed to provide the holder of the conservation easement the right to restrict certain activities on the private land, such as commercial development or residential subdivisions that are likely to compromise the long-term conservation of the cultural resources found on the property. An archaeological site can include a historic or pre-historic structure, site, or place that has cultural significance. The easement is a legally binding covenant that is publicly recorded and runs with the property deed for a specified time or in perpetuity. It gives the holder the responsibility to monitor and enforce the property use restrictions imposed by the easement for as long as it is designed to run. An easement does not grant ownership nor does it absolve the property owner from traditional owner responsibilities, such as property tax, upkeep, maintenance, or improvements.

Easement deeds are recorded with the County recorder's office to ensure that future owners of the property are also bound to the terms of the easement agreement. *The easement holder in turn makes a commitment to monitor and protect the resources forever.* Protection is achieved through regular and open communication with the landowner and annual visits to the property to ensure compliance with the easement restrictions. In rare instances steps may need to be taken to enforce the restrictions in the event of a violation.

How do you create an easement?

Establishing an easement is a joint effort between the property owner and the Center for Desert Archaeology. Preservation of archaeological resources is a core aspect of the Center's mission. Center staff will take the time to work through a step-by-step process with an interested landowner to identify key issues and help determine whether an easement will meet the mutual goals of the landowner and our organization. A thorough understanding of the land, the archaeological resources, and future goals is best

achieved through one or more on-site visits. After achieving a "meeting of the minds," an easement document can be prepared with relative ease.

Who can grant a conservation easement?

The owner of the property is the only one who can decide to place a conservation easement on his or her property. When a property is owned by several individuals, all owners must agree to place the easement. If the property is mortgaged, the mortgage holder must also be in agreement for the easement to be placed. A conservation easement is a voluntary land-protection tool that is privately initiated.

What are the benefits of an easement?

- Preservation – Cultural, historical, and archaeological values of a property will be preserved by future owners.
- Private Ownership is retained – The property owner is free to sell, lease, rent, or bequeath the property.
- Flexibility – Easements are tailored to meet the needs of the property owner, the resources to be protected, and the mission of the Center for Desert Archaeology as the easement holder.
- Financial Benefits – The donor of an easement may be eligible for federal and state income and estate tax benefits. Easement donors are encouraged to contact a financial advisor to determine what benefits may be available. Property tax benefits vary by state and sometimes at the local county level.

What are the tax implications of conservation easements?

If an easement is granted in perpetuity as a charitable gift, some federal income and estate tax advantages usually accrue. These tax savings may be substantial. Property tax benefits are state and locally determined and the impact of a conservation easement on property value and local property taxes vary by state. Some states like New Mexico offer a state tax credit for qualifying easements. It is strongly recommended that property owners consult an attorney/tax accountant regarding any tax implications on the donation or sale of a conservation easement on their property.

What are the responsibilities of the easement holder?

Whether the easement holder is a public or nonprofit organization, the holder has the responsibility to enforce the requirements stipulated in the easement. This responsibility generally includes:

- a)* Developing the language of the easement is clear and enforceable;
- b)* Establishing baseline documentation for the conservation easement property that documents the condition of the property at the time of the conservation easement donation or sale;
- c)* Monitoring the use of the land on a regular basis with reference to the baseline conditions. This requires visits to the property to maintain and open and clear communication with the landowner and to ensure that easement restrictions are being upheld;
- d)* Providing information and background data regarding the easement to new or prospective property owners;
- e)* Establishing a review and approval process for land activities that may require prior approval as stipulated in easement;
- f)* Enforcing the restrictions of the easement through the legal system if necessary and
- g)* Maintaining property/easement related records.

Further Information

For further information on archaeological preservation, including easements and financial incentives, see contact information below. The Center for Desert Archaeology encourages you to speak with your own legal and financial advisors and make decisions regarding the future use of your property only after careful consideration and professional consultations.

About the Center for Desert Archaeology

The Center for Desert Archaeology is a private non-profit organization located in Tucson, Arizona. The Center promotes the wise stewardship of archaeological and historical resources of the American Southwest and Mexican Northwest through numerous active research, preservation, and public education

projects. For information about conservation easements or other Center projects, call Andy Laurenzi at 520/882-6946 or email alaurenzi@cdarc.org. Visit our web site: www.cdarc.org