



## Archaeology Southwest

Exploring and protecting the places of our past

*Conservation easements are one of the most significant land protection tools available to private landowners. The goal of Archaeology Southwest's Site Protection 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 is a legally binding covenant that is publicly recorded and runs with the property deed in perpetuity, or in rare instances a fixed amount of time. *The easement holder, in this instance Archaeology Southwest, 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 direction provided by the conservation easement.

A conservation easement does not grant ownership nor does it absolve the property owner from traditional owner responsibilities, such as property tax, upkeep, maintenance, or improvements. Conservation easements are appurtenant to the land and survive the transfer of property ownership to another party. Conservation 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 conservation easement. All conservation easements are individually crafted by the landowner and the easement holder to meet their mutual goals.

### **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.

### **How do you create an easement?**

Establishing an easement is a joint effort between the property owner and Archaeology Southwest. Preservation of archaeological resources is a core aspect of Archaeology Southwest's mission. Our staff will take the time to work through a step-by-step process with an interested landowner to identify key issues and helps 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 conservation easement. If the property is mortgaged, the mortgage holder must also be in agreement for

the conservation 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 Archaeology Southwest 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, federal income and estate tax advantages usually accrue. 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.

### **About Archaeology Southwest**

***Archaeology Southwest* is a private nonprofit organization that explores and protects the places of our past across the American Southwest and Mexican Northwest. We have developed an integrated, conservation-based approach known as Preservation Archaeology.**

Visit us at [www.archaeologysouthwest.org](http://www.archaeologysouthwest.org)

Contact Info:

Andy Laurenzi

Southwest Field representative

[andy@archaeologysouthwest.org](mailto:andy@archaeologysouthwest.org)

520-882-6946x14