



SANTA FE CONSERVATION TRUST

**A Conservation Easement
Guide for Landowners**





Thanks for Your Interest in Conserving Your Land!

In this guide, we hope to give you a general understanding of:

- The mission, vision, and history of the Santa Fe Conservation Trust
- What a conservation easement is and does
- The financial benefits of conserving your land
- An overview of the conservation easement process
- The costs of completing a conservation easement
- What it's like to work with the Santa Fe Conservation Trust

We understand that every landowner's situation is unique, and we'd love to talk with you about your property and your goals. Please feel free to call us anytime at (505) 989-7019 or email info@sfct.org.

Please note that this guide does not constitute legal, financial, or tax advice. Landowners are strongly encouraged to retain qualified legal and tax advice throughout the conservation easement process.

About the Santa Fe Conservation Trust

Founded in 1993, the Santa Fe Conservation Trust (SFCT) was started to limit development in Santa Fe's foothills that could be seen from miles around. We now work throughout northern New Mexico, primarily in Santa Fe, Rio Arriba and San Miguel Counties. We are a nationally accredited land trust, which confirms that we meet national quality standards and have the organizational structure and financial stability to protect our conservation easements in perpetuity. SFCT currently holds conservation easements on more than 43,000 acres of land in northern New Mexico and works with over 100 landowners.

Since its founding, SFCT has also been involved in the development of the Dale Ball Trails, La Tierra Trails, Santa Fe Rail Trail, Sun Mountain Community Trail, La Piedra Trail and the Arroyo Hondo Open Space Trail system. We maintain the City of Santa Fe's soft surface trails via a robust volunteer program. We believe that everyone deserves equitable access to nature, so we offer inclusive programs to get people outdoors. We also protect the night sky through educational programs and by requiring low-impact lighting on our protected lands. From land conservation to trails to protecting the night sky and offering fun outdoor experiences, the Santa Fe Conservation Trust's work improves everyone's quality of life today and for future generations.

Mission

The Santa Fe Conservation Trust partners with our community to keep northern New Mexico's living lands and people flourishing together. We protect culturally and environmentally significant landscapes, ignite people's passion for nature and enable the continual regeneration of our healthy place.

Vision

SFCT envisions a future where everyone in northern New Mexico cherishes nature and works to preserve it for this and future generations.

Strategies

SFCT is a practical, on-the-ground partner for private landowners and communities wishing to voluntarily protect the conservation values of their land using permanent land protection agreements (conservation easements). Our landowner partners enter into such agreements for reasons as diverse as they are, including the desire to permanently preserve the land they love, ensure its availability for future generations, and protect unique ecological or archeological assets. Because protecting land in this way benefits the public, our work with landowners often allows them to access significant tax benefits.



Above: Mule Deer in the Galisteo Basin.

Future

Acquiring and monitoring conservation easements on iconic landscapes in perpetuity is at the core of SFCT's work. The long-term continuation of this work is dependent upon public support. SFCT is a 501(c)3 non-profit organization, making your donations tax-deductible to the full extent allowed by the IRS. Visit sfct.org for more information about SFCT's work and the many economic and community benefits of conserving the land you love.



"Sky and Grass" in the Galisteo Basin. Photo by Peter Ogilvie.

What is a Conservation Easement?

A conservation easement is one of the most powerful, effective tools available for the permanent protection of private land. A conservation easement is a voluntary legal agreement between a landowner and a land trust, like SFCT, that limits certain uses of a property in order to protect its conservation values. Conservation easements are perpetual: they are recorded with the county clerk and run with the land, even if it changes ownership.

- **Flexible Tool:** A conservation easement is a flexible tool that a landowner and land trust tailor to meet their common goals and the needs of a property. Easements can be designed to protect wildlife habitat, productive agricultural land, scenic open space, cultural resources, and recreational resources. While each conservation easement is unique, there are two major types of restrictions found in almost all easements: a limitation on subdivision, and a limitation on what parts of the property can be developed.
- **Land Remains in Private Ownership:** Landowners retain title to their land and continue to use, manage, and enjoy it, subject to the terms of the conservation easement. A conservation easement does not grant public access to a property unless the landowner specifically chooses to grant access. An easement also does not prevent a landowner from mortgaging, leasing, selling, or passing on their land. In fact, a conservation easement can be a great tool for families who wish to keep land intact for the next generation.
- **Perpetual Stewardship:** A conservation easement is a perpetual obligation for the land trust that holds the easement. As an accredited land trust, SFCT monitors compliance with each of our easements annually and works with current and all future landowners to resolve any issues. We are obligated and prepared to defend the terms of our conservation easements through legal means if necessary.



Financial Benefits of Donating a Conservation Easement

The donation of a conservation easement can have significant income tax benefits at the state and federal level. The development rights retired by a conservation easement have a monetary value, as determined by a qualified appraisal, and this value is considered a charitable contribution by both the federal government and the State of New Mexico. Conservation easements may also reduce property and estate taxes. It's important that you consult with your tax and financial advisors to determine how these tax incentives might work for you.

Federal Income Tax Deduction

Landowners who donate a conservation easement are eligible to deduct up to 50% of their adjusted gross income in the year of the gift and for a period of 15 additional years, until they've deducted the full value of the conservation easement.* Qualifying farmers and ranchers (those who get at least 50% of their income from agriculture) may deduct up to 100% of their adjusted gross income during this period.

* One caveat to the federal incentive is that, as of August 2019, the deduction works differently for landowners who receive a state tax credit. New IRS rules reduce the deductible value of an easement donation by the amount of state tax credit the landowner receives. For example, if a landowner donates an easement worth \$750,000 and as a result receives the maximum New Mexico state tax credit of \$250,000, only \$500,000 of easement value can be deducted on the donor's federal taxes. These new rules resulted from the Tax Cuts and Jobs Act of 2017. This is a new and evolving area of the tax code, so it's essential you get professional advice on this topic.

New Mexico Land Conservation Tax Credit

The New Mexico Land Conservation Tax Credit is a state tax credit designed to encourage the conservation of New Mexico's private open lands. Landowners who donate a conservation easement may receive a tax credit of 50% of the easement's value, up to a \$250,000 maximum credit, that can be used as a dollar-for-dollar offset of state income taxes. The tax credit is also transferable, allowing sale of the credit to a third party for cash—an attractive option for landowners whose state tax bills are relatively low.

Example 1: A landowner donates a conservation easement valued at \$400,000. They are eligible to receive a tax credit for 50% of that, or \$200,000.

Example 2: A landowner donates a conservation easement valued at \$600,000. They are eligible to receive a tax credit of \$250,000 (50% of \$600,000 is \$300,000, but the credit is limited to \$250,000).

Example 3: Two landowners who are listed co-owners of a property (for example, a husband and wife, each of whose names are on the deed), donate a conservation easement valued at \$600,000. Since the two co-owners have each donated \$300,000 of easement value, they would each receive a credit for 50% of that, or \$150,000. The result would be a combined \$300,000 in credits.

Earning and using a credit:

To earn a tax credit, a landowner must donate a conservation easement to a qualified land trust or government entity. Prior to the donation, the state's Energy, Minerals, and Natural Resources Department reviews the easement agreement to ensure that it meets state standards. After donating the easement, the owner submits an application to the state, which then issues the credit. Once earned, a landowner may use their credit to reduce state income tax liability (and carry forward unused credits for up to 20 years), or they may receive cash compensation for the credit by selling all or a portion of it to a third party.

Transferring a credit:

Once you earn a tax credit, you may sell it to a third party. This offers you immediate compensation, and offers third parties the opportunity to reduce their tax liability. You're free to attempt to locate your own third party purchaser, but you may find it beneficial to use a credit facilitator instead. We can help you with this. Landowners who transfer their credit should expect to receive approximately 80 cents on the dollar. So, a landowner who received the maximum credit of \$250,000 might sell the credit for about \$200,000 in cash.

Below: Pecos River Open Spaces.



Estate Tax Incentive

Retiring development rights through a conservation easement may reduce the value of inherited land and resulting estate taxes. Qualified conservation easement donations may also result in additional exclusions from the value of an estate. As usual, consult a tax professional for more details.

Property Taxes

Conservation easements may lower property taxes by reducing the assessed value of a property. Each County Assessor handles conservation easements differently, and it's up to a landowner to petition for a lower tax assessment once the easement is in place.

Grant Funding

In rare cases, SFCT may be able to raise funds through grant programs to purchase a conservation easement. These funding programs are highly competitive and usually require specific restrictions in the conservation easement. SFCT will work with you to determine if your property qualifies for available funding programs. A percentage of the value of the conservation easement is still typically donated by the landowner in these cases. You may be eligible for tax benefits for any donated portion of the conservation easement value.

Conservation Easement Process Summary



Conservation Easement Process: The Details

The donation of a conservation easement to the Santa Fe Conservation Trust (SFCT) is a permanent and binding agreement between you and the land trust. It is important that you carefully consider this decision and obtain independent legal and tax advice throughout the process. SFCT will work with you to craft an outcome that both parties wholeheartedly support.

The conservation easement process typically takes about a year, although it can take longer if the project is complex. Here's a rundown of the steps involved:

- 1. Initial Information Gathering.** We start by having a discussion about the basics of conservation easements, your goals, and the property itself. We encourage you to visit our website (sfct.org) and the Land Trust Alliance (lta.org) to learn more. We also perform some initial research about the property, such as looking up zoning and biological data.
- 2. Initial Meeting and Site Visit.** The next step is to meet with you and conduct a site visit to learn more about the conservation values of the property and your short- and long-term goals for the land. We also take this time to learn about the history of the property, its previous uses, and collect any information you have about the property, such as warranty deeds, title reports, surveys, maps, water rights information, biological or cultural resource assessments, etc.
- 3. Review by SFCT staff and Land Review Committee.** After our visit, SFCT staff will review the potential project, taking into account our organization's goals and priorities. We will then consult with our Board's Land Review Committee to determine whether or not to move forward with a conservation easement on the property.
- 4. Engagement Agreement.** If the committee approves moving forward, we will send you an Engagement Agreement that lays out our mutual intent to complete a conservation easement. Because conservation easements are complex, perpetual legal agreements, there are certain costs associated with completing the transaction. We will detail these costs in in the Engagement Agreement. (The costs are also described, in general, later in this guide). Usually the tax benefits to a landowner of donating a conservation easement more than offset the project costs. Upon signing the Engagement Agreement you pay SFCT the 'Commitment Fee,' which covers our time developing the project.
- 5. Title Investigation.** When both parties have agreed to move forward with an easement, SFCT begins title review. We require a title insurance policy for each conservation easement we accept and will order a title commitment to make sure that any issues are resolved early in our process. Any existing mortgages on the property will need to be subordinated to the conservation easement. We can provide general information about this process.
- 6. Mineral Remoteness Report.** In order for your conservation easement donation to qualify for state and federal tax benefits, you must either (1) determine that you own the mineral rights under your property (via title investigation and a letter of opinion from an attorney) and use the easement to prohibit mineral development, or (2) establish that the likelihood of commercial mineral development on your property is 'so remote as to be negligible.' The second option is more common, and requires hiring a professional geologist to write a report. If the mineral under your land is owned by a third party and there is potential for commercial development, the conservation easement likely can't be completed. (This situation is not very common within SFCT's service area.)



Above: Indian Painbrush in the Galisteo Basin.

7. **Survey (in some cases).** SFCT requires an accurate understanding of the conservation easement boundary, so if a survey does not exist on record, you will likely need to obtain one. Also, if the easement allows for building in certain areas, a survey of those areas may be needed.
8. **Environmental Assessment (not common).** If there is evidence or knowledge of hazardous materials on the property, a Phase One Environmental Assessment may be necessary. This report is required for liability reasons, and must be prepared by a qualified consultant.
9. **Drafting the Conservation Easement Summary.** We'll clarify both your objectives and SFCT's for the easement, and then draft a short summary of key easement terms.
10. **Preliminary Appraisal (optional).** At this point some landowners hire a conservation easement appraiser to produce a preliminary appraisal that offers a rough sense of the value of the conservation easement. A preliminary appraisal cannot be used for tax purposes, but it can help landowners with specific expectations of value decide whether or not to move forward.
11. **Drafting the full Conservation Easement.** Once we have agreed on the terms outlined in the easement summary, SFCT and its attorney will prepare a draft Deed of Conservation Easement for review and further refinement with your attorney. SFCT has a model conservation easement deed that we use as a starting point for each conservation easement we draft to speed the process and keep costs lower.
12. **State Tax Credit Assessment Application.** If you are seeking a state tax credit, SFCT staff will prepare an assessment application for the project and submit it to the state Energy, Minerals, and Natural Resources Department. The state reviews these applications three times a year. Approval of the assessment application indicates that the state believes the proposed conservation easement would qualify for a credit, pending review of the appraisal.
13. **Full Appraisal.** If you will be seeking state or federal tax benefits for the donation of the conservation easement, you will need to commission a "qualified appraisal" of the value of the easement. The date of valuation of your appraisal must be no more than 60 days prior to the date of the easement donation, and no later than the tax return filing date. Your appraisal may be subject to special rules that apply when nearby property is owned by you, a family member, or related party.

Please note that SFCT will request a copy of the appraisal before we sign IRS Form 8283 to acknowledge receipt of the gift. We will not review the appraisal to provide you assurances of its accuracy, but will review it to be sure the property is accurately described and for the general conclusion of value. We reserve the right not to sign the Form 8283 if we have significant reservations about the claimed value of the donation. For this reason, it's a good idea to obtain an appraisal and have SFCT review it prior to closing on the conservation easement.

Below: Barrel Cacti in the Sangre de Cristo foothills.



14. **Baseline Documentation Report.** SFCT staff will produce a Baseline Documentation Report that documents the condition of the property at the time of easement donation. This is required by the IRS and also by SFCT because it helps us steward the easement by giving us something to reference on future monitoring visits. We will work with you to schedule visits to the property to gather information, take photographs, and map structures and features on the property. We will provide you with a draft of the Baseline Documentation Report for review and comment prior to completion of the final report. You will sign the final report at closing as an acknowledgement that we have accurately captured the condition of the land.

15. **Board of Directors' Approval.** Once all documentation is in place, we will present the project to SFCT's Board of Directors and seek a Board resolution accepting the conservation easement.
16. **Closing.** The Deed of Conservation Easement and Baseline Documentation Report are signed by SFCT and the landowner. We will work with a title company to record the Deed of Conservation Easement with the County Clerk.
17. **Stewardship Contribution.** When we accept a conservation easement, SFCT assumes the responsibility and obligation to uphold the conservation easement's terms and conditions in perpetuity. These responsibilities include annual monitoring of the property, administration of all conservation easement documents and records, and legal defense of the conservation easement if necessary. To support SFCT's ability to carry out these duties, we request a one-time tax-deductible Stewardship Contribution from each landowner at closing.
18. **IRS Form 8283.** For landowners seeking state or federal tax benefits, SFCT will review the appraisal before signing IRS Form 8283 acknowledging the conservation easement donation. We reserve the right not to sign the Form 8283 if we have significant reservations about the claimed value of the donation.
19. **State Tax Credit Certification Application.** For landowners seeking a state tax credit, SFCT staff will submit all required documentation on your behalf after closing. At this point the appraisal is reviewed by the state Taxation and Revenue Department. Once a credit is granted, you can use it to offset your state taxes or hire a broker to help you sell part or all of it.
20. **Annual Monitoring and Perpetual Stewardship.** SFCT monitors and defends our conservation easements in perpetuity. We will coordinate with you and future landowners to schedule monitoring visits at least once a year, and work with you to resolve any issues. If you'd like, we can also help connect you with partners and programs that assist with management issues like erosion control, rangeland health, and forest health. Just let us know!

Conservation Easement Costs

The conservation easement process requires careful coordination, attention to detail, and the help of professional service providers. It does cost money to put an easement in place, but typically the tax benefits of an easement donation more than cover these costs. Below we've laid out the average costs a landowner should expect during the process. We are happy to give you more information about any of these items.

Item	Approximate Cost
Commitment Fee. This covers SFCT's time and legal fees conducting due diligence, drafting and negotiating the conservation easement, submitting the state tax credit application, and producing the baseline documentation report.	\$12,700 (or \$9,700 if no state tax credit is sought)
Title Insurance Policy	\$1,500 to \$3,000
Mineral Remoteness Report	\$1,500
Survey (if one doesn't already exist, or to add a building envelope)	\$3,000 to \$10,000
Appraisal (required by the IRS and state if tax benefits are sought)	\$15,000 to \$30,000
Stewardship Contribution. This contribution depends on the complexity of the conservation easement. It is tax-deductible to the extent allowed by law.	\$20,000 to \$40,000
Landowner Tax and Legal Advice. SFCT provides the draft Deed of Conservation Easement, to keep fees low.	Varies
TOTAL	\$50,700 to \$97,200 plus advisor fees

WORKING WITH THE SANTA FE CONSERVATION TRUST

We view landowners as partners. You are essential to our shared goal of protecting northern New Mexico's open space, water, wildlife habitat, and cultural resources. We also know that conserving land is a very significant and personal decision, so we take the time to learn as much as we can about each landowner's unique situation. Give us a call to talk things over! (505) 989-7019 or info@stct.org



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