Protecting Property
Each year thousands of people relocate to Arizona, while many more flock here during the winter months to take advantage of the moderate climate and experience the magic of the desert in bloom. Arizona has seen tremendous population growth in recent years. To accommodate it, many private residences have been built on previously undeveloped land. Consequently, many of Arizona’s picturesque natural areas are being consumed by rapid development. As analysts have described, “As the state continues to grow, more Arizonans are becoming concerned about the future of the natural landscape and lifestyle that originally attracted them here.” Many landowners want to preserve the land surrounding their homes and worksites in its natural state.

When making conservation decisions, landowners must consider the effect that rising income, property and estate taxes will have on land ownership. Shrewd property owners are able to combine their concern for the environment, their desire to reduce taxes and their desire to protect their estate for future generations by donating a conservation easement on their property. Conservation easements are one of the most effective and commonly used land protection tools available to private landowners.

By implementing a conservation easement, landowners are able to ensure that their property is permanently protected, while retaining ownership and use of the land. Such easements are a powerful estate-planning tool, and their benefits include substantial tax savings and design flexibility.
The Conservation Easement’s Role

A basic understanding of the nature of property ownership aids in the discussion of conservation easements.

Property ownership consists of distinct rights, including agricultural, development, mineral, timber, hunting, water and the right to exclude others from the property. Any of these rights can be transferred to another party and separated from the others; a person who holds one of these rights need not hold all. For example, a landowner may grant a right-of-way across a property, giving access to another party. Mineral rights are also regularly bought and sold separately from the remaining property rights.

By donating a conservation easement, a landowner divides this bundle of rights, giving up the right to act in a manner that may disturb the environment, while reserving the right to engage in other activities.

A conservation easement is a recorded deed restriction, under which a landowner agrees to transfer some or all of the development rights associated with the property to a qualified easement holder. The easement holder acquires a non-possessory interest in the property, while the landowner maintains an underlying fee title to the land. The landowner still owns the property, maintains the right to use and sell the property (subject to the terms of the easement), and can will the property to whomever she or he desires. The landowner also often reserves some development rights in the easement but relinquishes the right to any further development. The relinquished development rights are extinguished, meaning that neither the landowner, a purchaser of the land nor the easement holder can ever reacquire these rights.

The easement holder must assure that the landowners and subsequent landowners adhere to the conditions in the easement contract. In order to guarantee that the conditions of the contract are met, the easement holder assumes two responsibilities:

1. The holder of the easement becomes responsible for monitoring the property and enforcing the easement restrictions.
2. To fund the maintenance and monitoring of the property, as well as the enforcement of the easement restrictions, either the easement holder or the property owner establishes a monetary fund.

Benefits To Donating an Easement

Conservation easements are superior to other land protection devices because they strive to preserve the natural integrity of as much land as possible, while providing the donor and the easement holder with numerous benefits. Landowners often prefer conservation easements because their benefits extend beyond their conservation purpose of permanently protecting land; they are flexible and reward landowners for being environmentally conscious by providing myriad financial incentives. Conservation easements are the only land preservation device allowing landowners to tailor their contract to meet their specific needs, continue enjoyment of their land, permanently protect property and reap financial benefits.

Nonfinancial Benefits

Conservation easements carry with them numerous benefits not found in other conservation devices. Mainly, they are very user-friendly, providing many benefits.

1. Flexibility

Because each parcel of land is unique, with different conservation needs and values, and each landowner has different needs in terms of the use and enjoyment of land, flexibility in the drafting of a conservation easement makes this a particularly attractive conservation device.

Under this method of conservation, the landowners are able to choose the rights or interests that they prefer to retain and relinquish those that they feel would be better left to the easement holder. The easement holder acquires the rights that best serve its conservation purpose and is not burdened by the responsibilities of land ownership. As one commentator writes, “A properly drafted easement will limit or prohibit activities that are harmful to the conservation values of [the] property, but will permit the landowner to continue compatible activities.”

Conservation easements are flexible in many respects. For example, landowners may choose to impose conservation restrictions on all of the property, or they may prefer to restrict only a portion of the land. Or landowners may prefer to retain hunting or fishing rights on the property but relinquish all development rights. Or they may retain the right to build a home on the property for themselves and their children. Many options and combinations are available.

With this device, both parties are able to negotiate the terms to maximize their benefits.

2. Ease of Implementation

Because the laws regulating conservation easements are essentially self-implementing and relatively easily understood, the drafting of an easement contract does not require the involvement of government agencies, consultants or other outside parties. Thus, conservation easements may be expediently drafted and implemented, and the benefits are realized fairly quickly. Furthermore, “The laws enacted during the past 40 years to facilitate and encourage the use of conservation easements are among the most powerful and effective of environmental protection laws.” Because the laws encourage the donation of this type of easement (due to the tax benefits, environmental benefits and ease of implementation) and are user-friendly, the donation of a conservation easement is often one of the best alternatives to promote conservation.

3. Continued Enjoyment by the Landowner

By imposing a conservation easement on a piece of land, the landowner relinquishes little interest in the property and maintains nearly all rights associated with property ownership. The landowner gives up only the right to develop the land in a manner that will violate the terms of the easement, retaining all other rights not restricted in the contract. Thus, the landowner may still exclude others from the property and sell or bequeath the property.

The landowner retains use and enjoyment of, and often remains living on, the property.

4. Permanence

Conservation easements provide landowners with a permanent method for preserving their land. Under a conservation easement, landowners may restrict their land’s...
development rights in perpetuity, thus protecting their land indefinitely for future generations. Prior conservation options available to landowners provided an unpredictable method of preservation; these methods could be altered or repealed, and thus were not very effective for long-term preservation. The ability to donate a conservation easement on a property allows a permanent and viable solution for landowners interested in preservation. This type of land preservation assures that the beneficiaries of the estate will be able to enjoy it in the same pristine condition as did its previous owners.

Financial Benefits
One reason conservation easements have gained such popularity is the financial benefits that they provide through the reduction of income, property, capital gains and estate taxes. Both federal and state government support the donation of conservation easements and subsidize them through significant tax reductions.

1. Income Tax Deduction
The Internal Revenue Code (IRC) requires a conservation easement to have three characteristics before qualifying for an income tax deduction. The contribution must be of a "qualified real property interest, to a qualified organization, exclusively for conservation purposes." Arizona imposes the same eligibility requirements.

Qualified real property interest. The IRC describes a "qualified real property interest" as a restriction, granted in perpetuity, on the use of real property. Thus, a donation of such an interest entails two things: (1) A donated interest must restrict the use of the property; (2) The donation must be granted in perpetuity.

Qualified organization. The contribution also must be made to a qualified organization that meets three specific criteria: (1) The organization must be an IRS-recognized charitable organization or a public
agency of the local, state or federal government.22  (2) The organization must have a commitment to protect the donation’s conservation purposes. (3) The organization must be financially able to enforce the conservation easement’s restrictions.23

Examples of such organizations are government agencies and private nonprofit organizations, such as Arizona State Parks Department, Arizona Game & Fish Department, Pima County Natural Resources Conservation District, the Rincon Institute, the Desert Foothills Land Trust, and the Nature Conservancy. The Internal Revenue Service publishes a list of qualifying charitable organizations.44

Conservation purpose. The IRC establishes four acceptable conservation purposes: preservation of land for outdoor recreation or education of the general public, protection of a significant habitat or ecosystem, preservation of historically important land area or structure or conservation of an open space.25

First, the IRC lists the preservation of land for outdoor recreation by, or for the education of, the general public as a valid conservation purpose. This purpose requires that the land donated be available for substantial and regular use by the public.26 An example of this conservation purpose would be the donation of a lake recreation area for fishing and boating.27

Second, the protection of a significant “relatively natural habitat or ecosystem” is listed as a valid conservation purpose.28 A significant habitat or ecosystem is a habitat for “rare, endangered, or threatened species of animal, fish or plants.”29 Thus, a feeding or drinking area for an endangered species of deer would fall under this conservation purpose.

Third, the IRC identifies the preservation of a historically important land area or a certified historic structure as a legitimate conservation purpose.30 To qualify as “historically important,” a building, structure, or land area either must be listed in the National Register of Historic Places or “located in a registered historic district ... and ... certified by the Secretary of the Interior.”31

Finally, the IRC supports the preservation of open space (including farmland and forest land) when such preservation is either “for the scenic enjoyment of the general public, or pursuant to a clearly delineated federal, state, or local governmental conservation policy and will yield significant public benefit.”32

Following the donation of the qualifying conservation easement, the fair market value of the easement may be deducted on the donor’s federal and state income tax returns. The fair market value of the easement is equal to the difference in fair market value of the property before the donation and the fair market value of the property after the donation.33

The donor is able to claim a deduction in the first year, which does not exceed 30 percent of his or her adjusted gross income. Any value of the donation not claimed can be carried forward and deducted against income in the five following years. Any amount not used within the next five years is lost.

2. Capital Gains Tax Savings

Landowners forced to sell appreciated land also can use conservation easements to their advantage. Donating such an easement on the land prior to sale imposes a deed restriction on the property, reducing the value of the land by decreasing its development potential. When land burdened by a conservation easement is sold, the taxable appreciation is often greatly reduced. Thus, the reported capital gains on the property are minimized, as are the taxes on the sale of the property.44

3. Estate Tax Reduction

When land is bequeathed, the heir must pay state and federal estate taxes on that land. Frequently, these taxes are so burdensome that they force the sale of the inherited property to pay those taxes. This is primarily due to the fact that such taxes are levied on the fair market value of the land, rather than the original purchase price or the value of the current use.34  This is extremely problematic when inheriting a property that has drastically appreciated in value.

The Taxpayer Relief Act of 1997 eases the impact of estate taxes by increasing the amount of assets in an estate exempt from federal taxation.35  The amount of property exempt will increase gradually from $625,000 in 1998 to $1 million in 2006.36  Although this increase has proven beneficial, the value of the estate after exemption is taxed at a much higher rate than any other type of tax, and heirs of large estates often still have difficulty making estate tax payments.

Conservation easements can help to keep inflated estate taxes manageable. By donating a conservation easement, a landowner will lower the fair market value of the property by the value of the easement, thus lowering the value of the estate. This will reduce the amount of estate taxes due as the land is passed from generation to generation. One further incentive encouraging the donation of conservation easements was introduced through the Taxpayer Relief Act of 1997. Section 2031(c) allows additional estate tax savings for landowners with conservation easements over their property.37  Landowners are able to exclude 40 percent of the value of the easement from the value of their estate against which property taxes are assessed.38  The exclusion is capped at $500,000 and is allowed in addition to the estate tax savings realized through the reduction in the value of the land.40

There are requirements to qualify for the § 2031(c) exclusion:

1. The land subject to the easement must be within a 25-mile radius of a national park, wilderness area or Metropolitan Statistical Area (generally an area with a population of more than 50,000), or within 10...
miles of an urban national forest.

2. The decedent or a member of the decedent’s family must have owned the land for at least three years.

3. The land must be donated by the decedent or a family member and meet the requirements under the income tax reduction rules (easements solely to protect historical sites are not eligible).41

Importantly, if landowners do not wish to restrict their own use of the land, they can still reduce estate taxes for their heirs by donating a conservation easement on the property through their will. Furthermore, the new law allows heirs to donate a conservation easement on the inherited land and qualify for an estate tax exemption.42

4. Property Tax Reduction

Arizona landowners have observed dramatic increases in property taxes in recent years. This is because property taxes are assessed based on a percentage of estimated fair market value of the property. Because demand for land is increasing, selling prices are being driven up and property values are increasing—along with property taxes. Donation of a conservation easement may provide some relief to landowners facing such a situation.43

Recent Successful Conservation Easements

In recent years, the United States has seen an increased receptivity to conservation easements. The Nature Conservancy, a private nonprofit organization, holds more than 1.4 million acres in conservation easements in the country as of March 2002.44 And as of December 31, 2000, local and regional land trusts throughout the United States have protected almost 3 million acres of land through the use of conservation easements.45 This represents a 475 percent increase from the number held the previous year.46 The following examples provide an indication as to why conservation easements are becoming so popular. Though the needs of the landowners in each instance varied drastically, the parties were able to create an easement that met their needs.

Babbitt Ranches Donation

In January 2001, Babbitt Ranches made Arizona’s largest-ever donation of a conservation easement; it was made to the Nature Conservancy. The easement protects 34,480 acres of the Cataract Ranch on the Coconino Plateau National Reserve Lands. Shareholders of the Babbitt Brothers Trading Company (BBTC) signed an agreement permanently restricting mining, subdivision and development of the land. This donation is seen as the first step toward the protection of 750,000 acres of land making up the Coconino Plateau National Reserve Lands, managed by the Babbitt Ranches and BBTC. Subdivision of land in this area is a substantial threat.

Jim Babbitt, a BBTC shareholder, describes the donation as a gift made “in appreciation of the people in Northern Arizona who have been so supportive of the Babbitt family and the Babbitt Brothers Trading Company.”47 Their goal was to pro-
protect the beautiful open space that Paul Babbitt describes as “a place where you can just about see forever and really be out of sight of the human imprint.” The land was preserved as an open space and thus has been made available to the general public.

**Granite Dells Donation**

Another easement donor, Sherman Payne, explains the reasoning behind his donation of a conservation easement over his Granite Dells homestead. First, he points out that it is difficult to keep up with the taxes on a piece of property that is not producing any income. Second, he feared the encroaching development consuming the surrounding areas. He wanted the land to be preserved for his children and future generations, without being developed. Finally, he felt it important to preserve the history surrounding the property.

Payne developed an agreement with the Central Arizona Land Trust and the Trust for Public Lands. In this agreement, he reserved, for each of his four children, the right to continue living on the property. Without the donation of the conservation easement, it is likely that the children would have had to sell this property to pay the estate taxes. Furthermore, Payne reserved the right to continue living on the land with his wife. The conservation easement extinguished all of the remaining development rights on the property.

These donations represent very different examples of conservation easements. The needs of the easement donors, as well as the size and scope of the donations, vary substantially from one situation to the next. In the case of the Babbitt donation, permanence was of paramount importance to the donors. The Babbitt Ranches wanted a device that would assure that the large stretch of land would be permanently protected and available to the public. The Payne donation was substantially smaller in scale. The donor primarily desired tax savings for himself and for his children, while retaining some rights of use on the property. Both donors were able to retain the rights they required while gaining their desired benefits.

The state of the environment has under-standably become a cause for concern. Many people have realized that once the natural state of a parcel of land is altered by development, it cannot be reconstructed; Arizonans in particular are beginning to recognize this fact. Conservation easements provide a unique preservation option, designed to benefit landowners, the general public and future generations. 

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“Thus, conservation purposes would include, for example, the preservation of a water area for the use of the public for boating or fishing, or a nature or hiking trail for the use of the public.”


33. T.R.E.A.S. REG. § 1-170A-14(h)(3)(2000): “The value of the contribution under section 170 ... is the fair market value of the perpetual conservation restriction at the time of the contribution. If there is a substantial record of sales of easements comparable to the donated easement (such as purchases pursuant to a government program), the fair market value of the donated easement is based on the sales price of such comparable easements. If no substantial record of market-place sales is available to use as a meaningful or valid comparison, as a general rule (but not necessarily in all cases) the fair market value of a perpetual conservation restriction is equal to the difference between the fair market value of the property it encumbers before the granting of the restriction and the fair market value of the encumbered property after the granting of the restriction.”

34. See Briggs et al., supra note 1, at 25, see also Small, supra note 6.

35. See Briggs et al., supra note 1, at 25-26.


38. Id. § 2031(c)(1)-(2) (2002).

39. Id.

40. See Anderson & Jones, supra note 3, at 191.

41. See Briggs et al., supra note 1, at 26.


43. Id.

44. See The Nature Conservancy, Conservation Information Management Section (internal figures as of March 2002).


46. Id.


48. Id.