

Conservation Easements as a Tool for Protecting Horse Lands

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Farms and landscapes are being protected nationwide for the continued use and protection of all things equine. From haying open fields to the preservation of pasture, the horses' nutritional and roaming needs as well as equine pursuits remain a concern as many acres of farmland and open space are under developmental threat.

Conservation easements, a primary tool for land protection in the United States for over forty years, is a valuable resource in the protection of land for equine related activities.

What is a Conservation Easement?



Three Chimneys Farm, in Lexington, Ky, is an example of a horse farm under conservation through a combination of both a Purchase of Development Rights and a donated conservation easement.

A conservation easement is a legal agreement between the landowner (grantor) and a non-profit conservation organization (grantee) which seeks to perpetually protect the property from development while retaining rights and activities conducive to the property's current uses and landowner's desires. Many horsemen and women desire to protect their farm property, its wildlife, natural resources and open spaces. This protection, though, should not inhibit its economic function as agricultural land, forest and timber resources or equine use; which is not only the grazing and pastureland, but also riding arenas, trails and other related facilities.

Many horse farms contain significant natural resources which are also referred to as the Conservation Values of a property, as defined within the IRS Code; the governing legislation concerning donations of real property and conservation easements. Conservation Values are described as:

1. The preservation of land areas for outdoor recreation by, or for the education of the general public.
2. The protection of relatively natural wildlife habitat.
3. The preservation of farmland, forests or other open space where such preservation will yield significant public benefit.
4. The preservation of farmland, forests or other open space where such preservation is pursuant to a clearly delineated federal, state, or local conservation policy that will yield significant public benefit.
5. The preservation of historically important lands.

Each property's array of Conservation Value is unique; therefore, each conservation easement is unique. The landowner does not relinquish ownership of the property, but rather specifies the protection of its natural character when encumbered by a conservation easement. The landowner retains all rights in and to the property except for those that he/she wishes to give up. He/she gives up certain rights, primarily the right to subdivide and/or develop the property. The right to continue agricultural production or timber harvesting, grazing or other equine related activity is not impaired. Such activity is

undertaken in accordance with the protection of the property's natural resources and wildlife habitat. Additionally, the landowner is not obligated to provide access to the general public; although it is not uncommon to allow specific access to hunt clubs or access to trail riders. For example, all of the rights associated with ownership of land can be viewed as a bundle of sticks. Each stick represents a right; the right to develop the land, the right to farm, the right to hunt, etc. The landowner will choose which rights to keep and which to remove from the bundle. Usually, the only right that is expected to be relinquished is the right to develop the property. All other rights are optional depending on the landowner's future intentions, the natural resources and Conservation Values to be protected. A landowner can always seek to retain economic benefit from services of the property such as rent for apartments or facilities, income from selling timber or leasing the land to fox hunters, trail riders or trainers.

The landowner can also retain the option to rent or sell all or some of the rights associated with the property, as well as the property as a whole. Landowners can retain the right to minimally develop it; for example, as a residential subdivision or commercial enterprise, or conversely sell, trade or entirely give up that right. Each conservation easement is written to encompass the desires of the landowner, the future intent of the property and the perpetual protection of the Conservation Values. In all cases, appraisals are the tools used to determine the financial value of the property in the marketplace. These valuations will assist the landowner, along with his/her counsel, as to which rights are to be retained, which given up and consequently what tax deductions may be garnered.

It is essential for horse farm owners to understand that the tax benefits are dependent upon the protection of these Conservation Values; the conservation easement is written in such a way as to protect them as well as permit continued equestrian use.

What are the benefits of encumbering my land with a Conservation Easement?



Conserved horse properties have been known to increase in value and bring many benefits to communities

The landowner may reap many benefits from a conservation easement placed on his/her property. First and foremost, the perpetual protection of the property will ensure that it will remain in its current physical state. Secondly, with the threat of development removed, the wildlife habitat and natural resource values will be enhanced. Thirdly, the landowner can be assured that the property will be enjoyed by future generations according to his/her desires for the property.

Lastly, depending on the state in which the property is located, the landowner may be eligible for state, federal and estate tax

deductions. For example, it is the value of the development rights associated with a piece of property that, if given up, may qualify as a charitable donation and subsequent tax deduction. The value of the development rights is determined through the process of a qualified appraisal which is conducted within 60 days of the signing of the conservation easement. For an update of available tax considerations, and many other important rules governing perpetual land protection, go to www.lta.org for the most recent changes in federal and state tax laws.

Additionally, some land trusts, as well as nationally recognized non-profit and governmental conservation organizations, may finance a conservation easement to protect the land while still allowing equine use. Many options exist in providing necessary perpetual protection of these farms and open spaces.

How do I go about taking advantage of this land protection tool?

There are many national and local 501(c)(3) conservation organizations, often called land trusts, throughout the United States qualified to hold conservation easements. A land trust is usually a local or regional not-for-profit organization, governed by a volunteer board of directors, established for the protection of land, landscapes, wildlife habitat or other natural resources. Land trusts with an agricultural emphasis are often the most compatible organizations for the interests of equestrian and equine properties. You can find your local land trust by going to the Land Trust Alliance website www.lta.org under the link entitled "Land Trust Locator". Other organizations qualified to hold easements include federal, state and local government entities such as departments of natural resources and town/county park districts.

Qualified organizations can provide essential guidance to landowners regarding the documentation necessary to a conservation easement transaction. It is important to note that such a transaction is legal in nature and thus the partnership between the landowner and qualified organization is essential to ensure protection and use of the land is perpetually documented according to the standards of practice in the conservation industry.

Once all documentation has been completed and the parties agree on the language of the conservation easement, the qualified organization is required to monitor the conserved property annually, with landowner permission, to ensure that the terms and conditions of the conservation easement have not been violated. This will ensure the uses reserved to the landowners may continue while the protection of the property's natural resources is never endangered.

Reserved equestrian rights may include, but are not limited to, the use of the farm for keeping of horses, grazing of horses, hunting with hounds on foot or horseback, trail riding and maintaining equestrian trails, as well as venues for commercial equestrian activity including horse shows and competitions, horseback riding instruction, raising, training, boarding and the sale of horses. Any and all of these uses will be acceptable so long as 1) no harm comes to any of the stated Conservation Values found and protected on the property, and 2) the parties explicitly reserve these rights in the conservation easement document itself. The intent of the landowner is paramount and the conservation easement should reflect those activities important to the landowner. As horse owners, it is important that the reserved rights are specific enough yet broad enough to continue the land use most relevant to the industry, or private activity, for years to come.

Is an Easement Appropriate for You and Your Property?

The best way to determine if a conservation easement is right for your particular circumstances is to contact other farm owners who have used this tool, as well as the information available from your local land trust. Conservation easements are complex, legal agreements that need professional expertise. In addition to the ELCR website (www.elcr.org), there are a number of resources available including the national Land Trust Alliance and its website www.lta.org. The American Farmland Trust, Farmland Information Center, www.farmlandinfo.org, is a good resource specific to farmland conservation easements. The picture illustrates the specific programs related to farmland protection, either using conservation easements or otherwise, and the incredible number of acres perpetually protected.

Conclusion

According to the US Census, our nation's population will increase by nearly 100 million people by the year 2050. The majority of the United States' equestrian communities are located in and near urban and suburban areas, which is probably where this growth will occur. Additionally, the US Forest Service has stated that approximately 6,000 acres of open land is sacrificed for development, per day. This amounts to the incredible loss of hay fields, pasture, competition

venues and trails. Millions of acres are needed for the upkeep, enjoyment and use of horses in this country. It is therefore imperative that equine enthusiasts as well as agricultural entities come together to promote the protection of these spaces before they are lost.

A conservation easement is a viable alternative to protecting the land, landscapes, wildlife and natural resources, while not inhibiting the economic productivity of an equine-centric property. It provides a vehicle through which the natural integrity of the land can be protected in perpetuity; while at the same time enhancing its recreational and economic value for all equine related uses for generations to come. All horse farm owners should be aware of conservation easements. To date, thousands of acres of farmland have been protected in the United States; a fraction of which is exclusive to equine related activity. Exploration of such conservation tools and the associated advantages can yield significant personal and public benefit not the least of which is the protection of lands for our horses' health and well-being as well as the continued vitality of the equestrian community.

Helpful Resources:

1. *Sample Conservation Easement with Equestrian Language* <https://elcr.org/wp-content/uploads/2013/06/HorseFriendlyCEsampledocument.pdf>
2. *What Is a Conservation Easement and How Can It Help?* <https://elcr.org/what-is-a-conservation-easement-and-how-can-it-help/>
3. *Guide to Equestrian-Friendly Conservation Easements* <https://elcr.org/wp-content/uploads/2014/08/Guide-to-Equestrian-Friendly-Conservation-Easements-with-links.pdf>
4. *Conservation Easements as Farm and Ranchland Protection* <https://elcr.org/conservation-easements-as-farm-and-ranchland-protection/>
5. *Land Trust Alliance Guide to Using the Conservation Tax Incentive* <https://elcr.org/wp-content/uploads/2013/04/LTA-Using-the-Conservation-Tax-Incentive.pdf>

About the Equine Land Conservation Resource (ELCR): The Equine Land Conservation Resource is the only national not-for-profit organization advancing the conservation of land for horse-related activity. ELCR serves as an information resource and clearinghouse for land and horse owners on issues related to equine land conservation, land use planning, land stewardship/best management practices, trails, liability and equine economic development. For more information about the ELCR visit our website at www.elcr.org or call (859)455-8383.