

## Conservation Easement Tax Benefits

*The following is general information on tax incentives that can help make private land conservation attractive and affordable. Tax incentives may not apply in every situation. The Colorado Conservation Tax Credit program will undergo changes, beginning in 2011. How those changes will be implemented, and their impacts, and not known at this time. La Plata Open Space Conservancy strongly recommends consultation with professional tax advisors during the course of creating a conservation easement.*

### *Federal Income Tax Deduction:*

The federal government allows taxpayers to claim a charitable gift deduction against federal income for the full value of a donated conservation easement, within specified limits. Recognizing that previously existing limits on the use of the tax deduction were discouraging some landowners from giving conservation easements, Congress changed the tax law in 2006. For easements given through 2009, the deduction can be taken at the rate of 50% of the taxpayer's Adjusted Gross Income (AGI) in the year of the donation, and may be carried forward at that rate for up to fifteen additional years. (Qualifying farmers and ranchers may be able to take the deduction at the rate of 100% of AGI.) Congress is currently considering legislation that would either make this change effective through 2010, or make it permanent.

### *State Income Tax Credit:*

The Colorado Legislature has created a credit against Colorado income tax for the donation of a conservation easement. The State will make changes to the tax credit program, to take effect in 2011, in a manner yet to be determined. Currently the credit is allowed for qualified conservation easements that meet federal requirements, and is subject to the following limitations.

- The tax credit is in the amount equal to 50% of the fair market value of the conservation easement, to a maximum credit of \$375,000.
- Credit not used in the year of the easement donation may be carried forward for up to 20 succeeding income tax years. Credit not used during that time is not refundable.
- A qualified conservation easement appraisal verifying the value of the easement must be submitted by the appraiser to the State for review.
- A taxpayer may generate only one conservation easement tax credit per year. A taxpayer who carries forward any unused portion of a tax credit may not generate credit for an additional donation until all of the original credit is used.
- A taxpayer may transfer (give or sell) all or part of his credit to one or more other taxpayers (transferees) to be used against the transferees' Colorado income tax. The transferee(s) of the credit may not claim a cash refund of the credit. Both the taxpayer and the transferee(s) must specify the amount transferred in written statements filed with their income tax returns.
- A taxpayer may use the credit against his taxes and/or he may claim a refund of any unused portion of the tax credit from the State of Colorado. The refund is available only *in years when there is a state revenue surplus* (fiscal years when state revenues exceed state spending limitations, as determined by the Treasurer in September. The refund

may only be claimed for one conservation easement donation in a given year, and the total of credit used and refund claimed in a given year may not exceed \$50,000.

- The state income tax credit is available only to “resident individuals” or domestic or foreign corporations subject to the provisions of the Colorado income tax statutory provisions applicable to corporations. Conservation easement donors whose primary residence is not in Colorado should check with an experienced advisor to see if they can qualify for the credit. For easement donors wishing to transfer tax credits, organizations exist that will, for a reasonable fee, find buyers and broker the sale of the credits. LPOSC maintains a list of these organizations.

#### *Federal Estate Tax Deduction and Exclusion:*

Because a conservation easement limits future uses of land, it also limits the value that can be assigned to property for estate tax purposes. This estate tax “deduction” can lower estate taxes significantly, and can help heirs to keep family land, rather than sell it to pay the estate tax. The federal Taxpayer Relief Act of 1997 created additional estate tax benefits for donors of conservation easements, including:

- An exclusion from estate tax of up to 40% of the value of land subject to a qualified conservation easement, up to \$500,000. The exclusion can be taken in addition to the estate tax deduction described above, and it can be taken by each succeeding generation of heirs of the original easement donor as long as the land remains in the family. It can also be taken in addition to the estate tax exclusion for family-owned businesses.
- A post mortem election whereby the heirs or executor of an estate may grant a conservation easement following the death of the landowner, in order to take advantage the estate tax deduction.

#### *State Property Tax Benefit:*

In Colorado, agricultural land that is taken out of production is reclassified as “vacant land,” often causing property taxes to increase astronomically. High property taxes on vacant land have forced many landowners to sell their land for development.

In 1995 the Colorado Legislature passed House Bill 1268, modifying property tax law to encourage land conservation. HB 1268 allows farmers and ranchers who have protected their land from development with a permanent conservation easement to take their land out of production without losing their favorable agricultural property tax classification. The law does not encourage cessation of agriculture. Instead, it enables the preservation of precious farm and ranch land by giving farmers and ranchers an option they did not previously have -- the option to retire or to suspend an operation due to market, natural, or other conditions. The law does not adversely impact other taxpayers, since it does not take land off the tax rolls or reduce tax revenue from affected lands. To qualify for the agricultural property tax benefit, the subject property must be 80 acres or larger (smaller if there are no structural improvements) and must be classified as agricultural at the time of the gift of easement.

Nonagricultural lands protected by conservation easement may qualify for reduced property taxes as well, since the easement restrictions generally reduce land value. This is not always the case, however, and an easement donor’s tax bill will ultimately depend upon the local tax assessor’s judgment of the diminution in value caused by the easement restrictions.