

The Conservation Easement Process | Overview

- 1.** Initial contact and conversation between Landowner(s) and the New Mexico Land Conservancy (NMLC). The Landowner describes in general terms his/her property and conservation goals; and NMLC explains how a conservation easement (CE) and the related process work, including a discussion of the potential tax benefits and the typical costs. NMLC clarifies that it can provide general tax information, but cannot provide specific legal, tax or financial advice regarding the CE and recommends that the Landowner seek his/her own counsel on these matters. NMLC requests general documentation concerning the property which may include warranty deeds, maps, photos, surveys, etc. The Landowner and NMLC decide whether to proceed to the next step.
- 2.** After reviewing general information supplied by the Landowner, NMLC staff will schedule a visit to the property. NMLC staff will visit the property and provide additional information about CEs to the Landowner and discuss issues they will need to address in order to complete a CE. NMLC obtains more detailed information about the property, its conservation values, and what rights the Landowner may want to reserve (e.g., building sites and land divisions). In addition, any potentially complex issues (such as assessing commercial mineral potential if mineral rights have been severed from the Landowner's ownership) are identified and discussed. At this point, if the Landowner and NMLC decide to move forward with the project, NMLC will obtain preliminary approval to proceed from NMLC Board of Directors.
- 3.** NMLC informs the Landowner of the specific costs associated with completing the CE and discusses methods of payment of these costs. Typical costs include NMLC's operating and transactional costs associated with completing the CE, as well as stewardship costs to cover the long-term costs of holding the CE, including CE monitoring, enforcement and legal defense costs. When Landowner is ready to move forward with the process, NMLC will prepare a letter of intent for the Landowner to sign and ask the Landowner to make an initial Commitment Contribution to enable NMLC to start working on the project.
- 4.** NMLC begins to draft the CE, obtain an updated title commitment, and gather other necessary and relevant documents as part of the process of completing its due diligence. In cooperation with the Landowner, NMLC completes the Baseline Documentation Report (BDR), which is required under Internal Revenue Service (IRS) regulations. The BDR is an inventory of the property at the time the Landowner grants the conservation easement, and is used in the future as a baseline to monitor and compare any changes in the property. The BDR generally includes a description of the physical and biological characteristics of the property, current improvements on and uses of the property; maps of the property; and a series of photographs that serve to document the current condition of the property. At times, depending on the nature of the conservation values and the complexity of the project, it may be necessary for NMLC to contract outside professionals or specialists. These may include: a surveyor; a biologist or ecologist to evaluate flora/fauna and wildlife habitat values; an archaeologist to assess cultural and historic resources; a geologist to determine the commercial mineral potential; and a consultant to conduct an environmental hazards assessment. During the initial phases of negotiation and drafting the CE and BDR,

the Landowner may wish to go through the State Tax Credit assessment application process to obtain a determination by the State that their easement donation has significant conservation value and will potentially receive a tax credit. The Landowner can apply for assessment at any time, but NMLC encourages landowners to apply as early as possible to ensure that their conservation easement will qualify for the State Tax Credit.

5. Landowner and NMLC discuss the CE draft, making adjustments until both parties are satisfied with the document. This process can take a few weeks to several months, depending on how many different issues the Landowner may need to think through and decide; how difficult it can be for multiple Landowners to communicate; and how fast each party can turn around drafts of the CE. It is possible to do this fairly quickly if the circumstances require. NMLC will do its very best to meet Landowner's preferences for completion dates, however Landowner should be aware that NMLC cannot and does not guarantee that any CE can be completed in any specific calendar year because of the many factors and circumstances over which NMLC has no control. The Landowner is advised to begin the process as early in the year as possible because, toward the end of the year, there is a point when NMLC will no longer be able to undertake and complete a CE prior to the year's end.

6. While conducting due diligence and negotiating the terms of the CE, the Landowner and NMLC may each refer to their respective legal counsel for review and to address any specific issues that require legal input. Once the CE is completed and legally reviewed, NMLC completes supporting documentation and exhibits to accompany the CE. These can include certain items that the Landowner must provide in finished form such as warranty deeds, a legal description or survey of the property, environmental assessments, etc. If there are any existing mortgages/liens associated with the subject property, the Landowner will need to arrange with the mortgage/lien holders to have these subordinated to the CE. NMLC can provide the necessary mortgage subordination forms.

7. At some point when the CE is near completion or completed, NMLC or the Landowner will commission an appraisal if they intend to take a charitable deduction or pursue funding for the value of the CE. NMLC can provide a list of qualified CE appraisers upon request. The Landowner should be aware that the IRS stipulates that the appraisal cannot be completed any sooner than 60 days prior to the signing of the CE, and no later than the date the Landowner files his or her income tax return for the year in which the CE was donated. Notwithstanding the foregoing, NMLC requires its own review of the completed appraisal at least 30 days prior to the income tax filing deadline.

8. NMLC staff present the final CE to the NMLC Board of Directors for their final approval and accompanying Board Resolution to accept the grant of the conservation easement. Please note that the official acceptance by NMLC of any conservation easement occurs only when the NMLC Board of Directors passes a specific Resolution to that effect and the deed of conservation is executed.

9. The Landowner and NMLC sign the CE and the BDR. By signing the CE, the Landowner is committing to notify and/or seek approval from NMLC on items required by the CE, and to comply with all terms of the CE (e.g. sending copies of all required information to NMLC as described in CE and notifying NMLC regarding any changes in ownership, including changes in percentage ownerships among existing owners). At this time, NMLC will also discuss to what extent Landowner is comfortable with NMLC publicizing the CE (e.g. in NMLC press releases, newsletters and website; and to outside media).

10. The Landowner makes all final contributions to NMLC. The Landowner also agrees to name NMLC as additional insured on its title insurance policy. NMLC records the CE with the relevant County Clerk's office and sends copies of the recorded CE, the BDR, and any other relevant materials to the Landowner and, if so desired, Landowner's representative(s).

11. If the Landowner is interested in pursuing the federal and/or New Mexico state income tax benefits associated with a donated CE, the Landowner should inquire about and understand the respective requirements to qualify for these tax benefits as early in the CE process as possible. NMLC can provide general tax information, but cannot provide specific legal, tax or financial advice regarding the CE and recommends that the Landowner seek his/her own counsel on these matters. If the Landowner decides to pursue the federal income tax deduction, once the CE is recorded, the Landowner, or his or her representative, sends a completed copy of IRS Form 8283 (which acknowledges the donation and specifies its appraised value for the Landowner's federal income tax return) to NMLC for NMLC's signature along with a copy of the final appraisal for NMLC's review. NMLC must receive the final appraisal and the completed IRS Form 8283 at least 30 business days prior to the due date for the Landowner's tax return. The Landowner should be aware that, if the appraised value does not appear to be properly justified, NMLC reserves the right to postpone or decline signing the Form 8283. If the Landowner wishes to pursue the New Mexico state tax credit associated with CE donations, the Landowner should be aware that the state has its own special process for reviewing and approving state tax credits.

12. Following NMLC's completion and acceptance of the CE, at least once a year thereafter, NMLC will contact the Landowner to monitor the CE. This involves an annual visit to the property by NMLC, ideally in conjunction with the Landowner to ensure compliance with the terms of the CE.