

Kevin Shea

- Conservation Tax Credit Transfer, LLC



Conservation Tax Credit Transfer
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State and Federal Incentives for Conservation

- Alternative to Development
- Public/Private Partnership
- Leverages Public Money for Conservation
- Federal Incentives have Conservation Easement Basis
- CE's Allow Private Ownership and Control of Portions of the Property Rights
- Negotiated not Forced via Planning/Zoning

History of State Incentives

- Started January 2004 @ \$100,000; increased January 2008 to \$250,000 based upon 50% of the first \$500,000 of Conservation Easement Value (HB 990).
- These benefits are Tax **CREDITS**
- All of the Conservation Tax Credits are fully transferable in increments of \$10,000 or more through a “qualified intermediary”

History of Federal Incentives

- Previous to 2006, Conservation Easement **Deductions** were capped at 30% of the Donors income over a period of 6 years, in 2006 and 2007, the deduction increases to 50% over a period of 16 years unless Donor is a “qualifying Farmer or Rancher”, who can deduct up to 100% of their income over 16 years. Legislation is pending to extend this benefit.

How are Conservation Easement Donations and Credits Generated?



Who is Eligible for a New Mexico Tax Credit?

- Must have a New Mexico tax liability
 - United States Citizen or resident
 - A United States domestic partnership
 - A limited liability company
 - A United States domestic corporation
 - Trusts and Estates

New Mexico Follows Both Federal and State Guidelines

- Federal Guidelines for **Perpetual Conservation Easements** on land with conservation purposes are based on 1.170A-14 for:
 - Outdoor recreation by, or education of, the general public
 - Protection of ‘relatively natural habitat’ (NOT just endangered species), of fish, wildlife, plants or ecosystems
 - Preservation of open space with public benefit or pursuant to defined Government Conservation policy
 - Preservation of historically important land areas or structures

New Mexico Follows Both Federal and State Guidelines (Continued)

- State Guidelines for **Fee Interests** in Real Estate are based on:
 - Open Space
 - Natural Resource or Biodiversity Conservation
 - Agricultural Preservation
 - Watershed or Historic Preservation
- “unconditional donation in perpetuity...to a public or private conservation agency”

Certification by Energy, Minerals and Natural Resources

- Must submit a Land Conservation Incentives Tax Credit Application Form including:
 - Recorded Copy of the Conservation Easement or Deed
 - Qualified appraisal by a qualified appraiser
 - Statement regarding donation not for density requirements
 - Copy of notice to adjoining landowners-(may be amended)
 - Pertinent maps
 - Phase I environmental assessment- (may be amended)
 - A copy of any management plan for the Property
 - Mineral report
 - Information on the holder of the conservation easement
 - And multiple other documents- It is still in formative stage

Application Process and Certification of Eligible Donation

- If application is complete, the Secretary of Energy, Minerals and Natural Resources approves the application if it complies with the Natural Lands Act and meets the requirements of the law.
 - Approval is given by issuance of a letter to the applicant and the Taxation and Revenue Department. Letter certifies that the donation meets the requirements of the Land Conservation Incentives Act

Donation Value Based upon a “Qualified Appraisal”

- Performed by a ‘qualified appraiser’, holding a State Certified General license
- Complying with USPAP and Treasury Regulations.



How is Conservation Easement Donation Value Determined?

- Based on “Qualified Appraisal”
- Applicable Standards
 - Appraise entire contiguous parcel
 - Address enhancement to other nearby lands owned by family or business partners
 - 60 day rule
 - Completed *before* you file your return
 - Uses **Comparable** comparable sales
 - Does it look too good to be true?

CE Value Determination

- Before and After analysis
- For Example:
- \$1,000,000 “Before Value”
- 600,000 “After Value”
- \$400,000 “Value of the CE”

CE Value Determination

- Donation Value may be less if a Bargain Sale is used

•	\$1,000,000	“Before Value”
•	<u>600,000</u>	“After Value”
•	400,000	“CE Value”
• Minus Cash	<u>-100,000</u>	(Bargain Sale)
• Net Donation	\$300,000	

The Role of Conservation Tax Credit Brokers- or “Qualified Intermediary”



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Conservation Tax Credit Brokers

- Facilitate the transfer of ‘good’ credits between sellers and buyers of credits
- Transfer at the going market rate
- Perform ‘due diligence’ by reviewing all the necessary documents that make up a tax credit transfer for compliance with current statutes and business practices

Due Diligence vs. Prescreening

The Tax Credit Broker **should** provide an increased level of due diligence as compared to the State prescreening.

- Landowners should ask for a listing of services offered with tax transfers- what are you purchasing?
- Brokers may provide review of both State and Federal paperwork necessary for a successful tax credit transfer.

Due Diligence

- Appraisals-the most contested document
 - We are the only transfer entity that has a designated appraiser doing reviews
 - Spreadsheet review looks at math, USPAP and Treasury Regulation standards, legal descriptions, does it track with the recorded Conservation Easement or Deed of Transfer? does it include all the required components? Is it reasonable?

Due Diligence

- Conservation Easements or Deeds of Transfer
 - Are the Conservation Values defined for a CE?
 - Are the legal descriptions accurate?
 - Is the document recorded correctly?
 - Are the permitted and prohibited uses defined and do they track with the appraisal?
- IRS and State tax forms
 - Are all the forms included and filled out correctly?

Due Diligence

- Title Commitments, Baseline Reports, Mineral Remoteness Letters, Subordinations
 - Do the legal descriptions match on all these documents?
 - Does the characteristics reported by these document track thru the remaining papers?

New Mexico State Conservation Tax Credit Examples

The following examples are based upon a return to the seller of 80% (the 'going market rate') and are based upon the Conservation donation value and the increased 2008 Tax Credit levels.



New Mexico State Conservation Tax Credit Examples

Amount of Conservation Value	Amount of Credit	Seller Cash at Transfer
\$350,000	\$175,000	\$140,000
\$500,000	\$250,000	\$200,000
\$750,000	\$250,000	\$200,000

NM Tax Credit Examples with a Bargain Sale

CE Value	Bargain Sale Amt	Net CE Value	Credit Amount	Seller Cash
300,000	100,000	200,000	100,000	80,000
400,000	100,000	300,000	150,000	120,000
950,000	100,000	850,000	250,000	200,000

Federal Deductions

- Tax years 2006 and 2007 have increased benefits based upon provisions of the Pension Protection Act of August 2006, Legislation is pending to extend this benefit.
- Federal benefits are **DEDUCTIONS**
- The calculations are more variable due to the landowner's personal tax situation and are based upon a ratio of the landowners Adjusted Gross Income (AGI)
- Farmers and Ranchers can deduct up to 100% of their AGI, others can deduct up to 50% of AGI

Federal Example, \$500,000 Deduction, an Individual

Adjusted Gross Income	Easement Deduction	Deduction Per Year	Total Donation Deduction
\$50,000	\$25,000	\$25,000	\$400,000 (16yrs X 25K)
\$100,000	\$50,000	\$50,000	\$500,000 (10yrs X 50K)

Federal Example, \$750,000 Deduction, an Individual

Adjusted Gross Income	Easement Deduction	Deduction Per Year	Total Donation Deduction
\$50,000	\$25,000	\$25,000	\$400,000 (16yrs X 25K)
\$100,000	\$50,000	\$50,000	\$750,000 (15yrs X 50K)

Federal Example, \$500,000 Deduction, a Farmer/Rancher

Adjusted Gross Income	Easement Deduction	Deduction Per Year	Total Donation Deduction
\$50,000	\$50,000	\$50,000	\$500,000 (10yrs X 50K)
\$100,000	\$100,000	\$100,000	\$500,000 (5yrs X 50K)

Federal Example, \$750,000 Deduction, a Farmer/Rancher

Adjusted Gross Income	Easement Deduction	Deduction Per Year	Total Donation Deduction
\$50,000	\$50,000	\$50,000	\$750,000 (15yrs X 50K)
\$100,000	\$100,000	\$100,000	\$750,000 (7yrs X 100K)+ (1yr X 50K)

New Mexico Conservation Tax Credit Parting Comments

- Put together a good team for the job
- Only one Credit can be used at once- Think ahead and keep your team advised
- Tax Credits are fully transferable at any time
- Transfers can take place on or before the extended due date of the following year
- Legislative changes are pending
- IRS Audit concerns



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