



Donating a Conservation Easement to the Land Trust of the Upper Arkansas Due Diligence Guidelines and Procedures

Step 1: Education on Conservation Easements

Review the materials sent out by the Land Trust of the Upper Arkansas (LTUA). Read thoroughly the questionnaire provided by LTUA. Decide if you want to take the next step in donating a conservation easement.

Step 2: Initial Meeting

Before you make your final decision to commit to a conservation easement, you should schedule a meeting with LTUA to discuss: the specific land to be donated, your thoughts about what you would like to see as the future use of the land, and conservation easements in general.

Step 3: Qualification and Acceptance of the Land

The Federal Internal Revenue Service and Colorado State Revenue Department have clear criteria for qualifying land for a conservation easement and the attendant benefits (tax deductions and tax credits etc.). So the next step is that representatives of LTUA will visit the land, with you, and identify the factors which both adhere to and detract from the stated IRS criteria (e.g. scenic view sheds, open ranch/agricultural land, wildlife habitat, etc.). During the site visit, LTUA's members will also want to see known survey pins on the property. They will then write up the results of that visit in the form of a recommendation to accept or reject a potential conservation easement on the land. They will share that assessment and recommendation with you and then will submit it to the LTUA board for their acceptance or rejection. Acceptance by the LTUA board means that the land has been deemed to qualify for an easement per IRS rules. It does not mean that an easement will necessarily be granted. That acceptance is conditioned on successful completion of all of the steps below. (At times steps 2 and 3 can be combined)

Step 4: Determining the approximate value of the Conservation Easement (CE)

Appraisal Expert: Retain an Appraiser (with conservation easement appraisal skills) to appraise the land to be placed under easement and calculate the easement "donation" value. The donation value must be calculated (or confirmed) not more than 60 days prior to the transfer and recording of the Deed of Easement. LTUA can provide a list of appraisers and other professionals that have experience with conservation easements.

Before completing a full appraisal you might want to obtain preliminary estimates from an appraiser to determine if the Federal and State tax programs will be sufficient for your needs.

Step 5: Mortgage Subordination

If a mortgage exists on the property, you must obtain a mortgage subordination document from the lender (LTUA will supply you with a form letter for the lender). If the lender will not agree to subordinate the mortgage, you may consider refinancing with another lender that will agree to these terms.

Step 6: Intention to Execute a Conservation Easement

You, the Landowner, must next execute the LTUA Letter of Intent and pay a non-refundable \$1,000 to begin the process. This fee covers four hours of legal review by LTUA's attorney and associated operating costs. Conservation easements that are unusually complicated may incur additional costs that will be billed to the landowner prior to closing. Phased conservation easements will require a \$1,000 fee at the beginning of each phase. At this point, you should personally begin to review the LTUA model Deed of Easement and consider those land uses which are permitted and prohibited, and changes that are important to you.

Step 7: Landowner Process Steps

Document Collection: Collect all of your documents that pertain to the property to be donated: title documents, survey maps, existing title insurance policy or a current title commitment, adjudicated water rights, current mortgage, and any other descriptive materials about the property.

- *Title Work:* LTUA will require a "To Be Determined Title Commitment" with mineral resources addressed to insure that the Conservation Easement is properly of record and insuring LTUA's interest.
- *Survey:* A survey will need to be completed that locates all existing structures; any reserved building envelopes or other improvements. LTUA will help you define what needs to be recorded on the survey.

Baseline Expert: Retain a baseline expert to prepare a baseline report detailing the:

- Legal description of the land and title information
- A comprehensive and accurate baseline inventory of the property's existing natural resources.
- Specifics of the land in its current state (buildings, fences, vegetation, water etc.)
- Description of the land to be conserved and any building envelope to be contained within the conserved land (This may also require a survey in order to be precise)
- Conservation values to be maintained on the land

Geology Expert: If the mineral rights have been separated from the land, LTUA requires a letter from a geologist declaring that there are no mineral deposits on the land; this is referred to as a "mineral remoteness letter".

Legal Expert: Retain a lawyer to:

- Execute a subordination agreement with the bank if there is a mortgage on the property
- Redline the LTUA model Conservation Easement agreement. This is the agreement (Deed of Easement) between the landowner and the LTUA. It will embody all of the

permitted and prohibited uses of the land under easement as well as the process and remedies for any future violations of the agreement. So it is critical that it receives you and your lawyer's full attention, and that you provide plenty of time to "negotiate" changes with LTUA. To maximize efficiency, it is important that you and your lawyer use the LTUA model easement as the basic document and redline requested changes to that document.

- "Negotiate" (with you) changes to the model easement with LTUA.

Accounting Expert: Ask your accountant to calculate the federal tax deductions, state tax credits and potential estate tax benefits of executing the easement. Ask him/her to prepare form 8283 for submission with your federal tax return after the Deed of Easement has been recorded.

State Tax Credit Broker (if desired): If you are contemplating bartering your state tax credits for cash, you will need to do so through a practicing barter agent. It will be important to have a conversation with him/her so that you can understand the process.

Land Management Plan: If you anticipate grazing on the land in the future, you must prepare a management plan per the instructions and example we will provide.

Step 8: LTUA Acceptance

A copy of the entire package of Deed of Easement, Baseline Report, Geologists report, Land Appraisal, and Land Management Plan is submitted to the LTUA board for final acceptance and permanent retention. The board will vote for final acceptance or rejection at this time. Clearly, if the Deed of Easement has already been agreed to and the accompanying documentation is present, acceptance should be assured. Also at this time, you will make the required Stewardship and Endowment payment to LTUA.

Step 9: Process Completion

- Sign the Deed of Easement and provide LTUA the recording fee. LTUA will then record the deed with the county clerk, retain a copy, and send a copy to you.
- Complete (with your appraiser and accountant) and file form 8283 after it has been signed by LTUA.
- Complete the required Colorado Department of Revenue forms, including: DR 1303, 1304, and 1305.

Step 10: Annual Monitoring

Each year LTUA will monitor the property to make sure that the terms of the conservation easement are being upheld. LTUA will contact you before entering the property. Please contact LTUA if have questions regarding the conservation easement or are concerned about a possible violation.

Step 11: Thank you

Enjoy the fact that you have helped protect the natural, agricultural, scenic, or historical resources of the Upper Arkansas Valley.