Landowner Guide & Landowner Worksheet

Partnerships with landowners are the primary reason Utah Open Lands has protected over 67,000 acres to date. Placing a conservation easement on a piece of property is only the beginning of a relationship Utah Open Lands maintains with the land, the landowning family and the community.

Utah Open Lands works to preserve land utilizing many different tools and techniques. From bargain purchase to donations of land or conservation easements. Utah Open Lands has over 35 years of experience in finding a conservation solution for landowners and the land.

The information contained in this Guide is intended to be used for general reference. Utah Open Lands does not provide this information in place of legal or tax counsel and strongly suggests all landowners considering a conservation solution for their property seek legal and tax advice. Included is guidance on Utah Open Lands' process regarding a conservation transaction, common tax information of conservation easements and gifts, and a worksheet to aid landowners in completing a transaction. Updated 11/11/2025

30 Years of UTAH OPEN LANDS PRESERVATION

Organization Mission
Utah Open Lands (UOL) is a non-profit, tax-exempt organization whose mission is to assist landowners in protecting the scenic, wildlife, historical, agricultural, and recreational values of open land in the state of Utah for the enjoyment of present and future generations.

Utah Open Lands is an Accredited Land Trust by the Land Trust Accreditation Commission which means UOL is not only recognized by the IRS as a Qualified Conservation Organization but also that Utah Open Lands meets the highest standard for land conservation. Utah Open Lands is a non-governmental, non-political conservation organization, which utilizes educational outreach, donations of land and conservation easements, acquisitions of land and easements, and conservation buyers and investors to accomplish its goals of tangible land protection. By preserving open spaces, Utah Open Lands aids communities, investors, and government leaders interested in protecting Utah's quality lifestyle.

History
Utah Open Lands incorporated in 1990, in response to the overwhelming pressures of growth and development in Summit and Wasatch Counties. In 1995, as these pressures increased statewide and the importance of open space protection became even more apparent and urgent, the organization became a statewide land trust with the mission of serving as a local, regional and state resource for land protection.

Conservation Methods
The hallmark of Utah Open Lands' innovative tools is the conservation easement. A conservation easement is a binding, legal agreement entered into mutually and voluntarily by a landowner and Utah Open Lands for the purpose of protecting the special features of a property by restricting development. The land remains in private ownership while Utah Open Lands acts as conservator ensuring the protection of the conservation values. The landowner can continue to live on and use the property, sell it, or pass it on to the next generation. With the passage of the Farm and Ranch Protection Act there are additional estate tax, as well as income tax, benefits available. The donation of a conservation easement may result in a charitable deduction for the donor.
See Conservation Easement Criteria/Federal Requirements page 4

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What is Utah Open Lands?

Utah Open Lands (UOL) is an accredited land trust, one of roughly 2,000 land trusts throughout the nation. A land trust, like UOL, is a non-profit, tax-exempt, public charity identified further under the Internal Revenue Service Code, as a qualified conservation organization able to hold conservation easements. As a land trust, UOL assists landowners in the voluntary preservation of their land, protecting its scenic, wildlife, historic, agricultural, and /or recreational values. By preserving open spaces, Utah Open Lands aids communities, investors, landowners, and government leaders interested in protecting Utah's quality of life.

What is a Conservation Easement?

A conservation easement is a voluntary and legally binding agreement between a landowner and a qualified conservation organization. When a landowner donates an easement to a land trust or public agency, she or he is giving away some of the rights associated with the land. The easement permanently limits uses on the land in order to protect its conservation values, as specified in the Internal Revenue Code (IRC) 170(h). Conservation easements offer private landowners flexibility in protecting their land. For example, a donating landowner can retain the right to grow crops on a parcel while, at the same time, relinquishing the right to build additional structures on the parcel.

The land trust is responsible for making sure that a landowner adheres to the conservation terms of the easement. An easement may apply to all or a portion of the property and may or may not allow for public access to the property. A landowner who has donated a conservation easement can sell the land or pass it on to heirs, but future owners of the property are bound by the terms of the easement.

Why Would a Landowner Donate a Conservation Easement?

Typically the reason for donating a conservation easement is the landowning family's love of the land. When donated to a qualified public charity like Utah Open Lands, conservation easements constitute a charitable donation and consequently have favorable tax consequences for the landowner making the gift. These tax benefits range from income tax deductions to estate tax benefits.

How is the Value of a Conservation Easement Determined?

The value of a conservation easement is determined by a qualified conservation appraisal. This appraisal must meet the new qualifications established by the IRS governing conservation easement transactions as of 2006.

Does a Conservation Easement infringe on Private Property Rights?

No. Actually a conservation easement enhances private property rights as it allows families a choice when faced with development pressures, which could force the sale of the property. The right of a landowner to preserve his or her land is equally valid as is the right to develop it. Again, an easement is a voluntary agreement entered into mutually, which allows for a landowner to continue owning the land, living on the land, working the land, and passing it on to the next generation.

Is a Conservation Easement Binding on Successors? If "Yes", Does that Infringe on My Personal Property Rights?

Yes. The conservation easement is binding on successive owners, but No, it does not infringe on personal property rights any more than any other significant deed restriction or development of the property would. For many landowners the decision to develop the land locks in the fate of a family heirloom far more than does a conservation easement. A conservation easement is evident in the change of title. It restricts future uses while maintaining current uses forever so the status of what the successive owner is either inheriting or buying is clear.

Landowner Worksheet
A first step in the process is for the landowner to complete the Landowner Worksheet contained in this Guide.

Site Visit
In order to determine whether a piece of property has conservation potential, a site visit must be conducted. An initial site visit will be conducted by a Utah Open Lands staff member. Subsequent visits may be necessary to have a thorough analysis of the public benefits and the conservation values.

Public Benefit/Conservation Values
The property must also be considered in terms of its benefits to the public. This does not mean public access to the property, rather an evaluation by Utah Open Lands of the conservation values based on IRS and organizational criteria to assert the public benefits of the eventual preservation.

Funding
Utah Open Lands believes strongly in providing fair value for conservation easements we purchase. However, funding for Conservation Easements is highly competitive and there are very few available funds. If the property owner(s) seeks funding, it should be known that this process will take longer and that a donation of a portion of the value may aid the funding process. The determination of the value of a conservation easement or fee acquisition is based on a qualified conservation appraisal. Utah Open Lands also requires that the landowner verify that they are only working with UOL to avoid confusion among potential funding sources.

Stewardship Fund Contribution
As set forth under accredited guidelines and the IRS Code for a qualified conservation organization, Utah Open Lands must have the resources and the commitment to monitor and defend the conservation easement in perpetuity. To this end we ask for a contribution from the landowner towards this fund. If the landowner is not able to contribute, funding will need to be sought from outside sources and may take time to secure before accepting the conservation easement.

Current Conditions / Baseline Documentation Report
In accordance with IRS regulations and in compliance with Utah Open Lands monitoring guidelines, adequate documentation of the current conditions and conservation values associated with the property must be established. The IRS stipulates that the landowner may provide this document to the Grantee organization, or our organization can put the necessary documents together. This report will consist of maps, pictures and a narrative description of the parcel. All parties must agree at the signing of the conservation easement that the baseline document serves as an accurate representation of the property. This baseline document serves as the basis for our required annual monitoring mandate as the Grantee to ensure that the terms of the conservation easement are enforced.

Title Report / Insurance
As with any land transaction, it is important that the landowner verify that he / she has clear title to his / her property. For this purpose, we require that the landowner provide us with title insurance or a title report. This is also critical for determining if there are any encumbrances which could effect the granting of a conservation easement. Mortgage and certain third party easements will need to be investigated and subordinated.

$ This expense may be the responsibility of the landowner .

Appraisal
When seeking a tax benefit a qualified conservation appraisal will be required to determine the value of the conservation easement.

$ This engagement and expense may be the responsibility the landowner .

Water Rights
If the conservation values being protected include irrigated farmland or wetland habitat values, water rights will need to be encumbered by the conservation easement.

Mineral Interests
In some instances, landowners may or may not be aware that they do not own the mineral estate of their property. This can be a critical issue in any tax benefit a landowner is interested in pursuing. If the mineral rights have been severed from the property after 1973, the landowner must obtain a geologist report indicating that the presence of any mineral of monetary interest, which could be extracted from the property, is "so remote as to be negligible."

$ This cost may be the responsibility of the landowner .

Conservation Easement drafting
Utah Open Lands staff or the landowner's attorney can do a draft of the conservation easement. Once the easement is in draft stage, the landowner and Utah Open Lands staff will review the document, suggesting changes insuring that the easement achieves the preservation of the conservation resources on the property and the landowners intent. Both the landowner's attorney and Utah Open Lands' attorney review a final draft. Utah Open Lands advises every landowner to seek independent legal counsel.

$ Landowner's independent counsel fees are the responsibility of the landowner .

Utah Open Lands' Board Review and Final Approval
Utah Open Lands' Board of Directors' approval of the project is required for every conservation easement transaction the organization enters into. The organizations' criteria, including the necessary due diligence sited above must be met before Utah Open Lands can accept a conservation easement.

Utah Open Lands Criteria for Accepting Conservation Easements

Utah Open Lands will consider accepting easements that are consistent with its mission and philosophy and that meet the following criteria:

Located within Utah in general, and specifically within areas which Utah Open Lands maintains conservation easements such as the Wasatch Back, Wasatch Front, South Eastern and North Eastern Utah, or are strategic acquisition properties, with exceptional conservation value that fall within Utah Open Lands' mission and purpose;

Granted perpetually;

Qualifies under 170(h) Federal Code as having public benefit for conservation purpose; *

Of sufficient size to protect the conservation values associated with it;

Permit responsible stewardship under the guidelines established and that can be adequately protected at a reasonable cost and level of effort, taking into consideration the existing and projected resources to fulfill the perpetual stewardship responsibility;

Accompanied by a donation to the Utah Open Lands' Easement Stewardship Fund pursuant to our stewardship Policy;

Consistent with one or more of the following IRC § 170(h) criteria (which are considered under Utah law) :

- Preservation of land areas for outdoor recreation by, or for the education of, the general public;
- Protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystem;
- Preservation of certain open space, including farmland and forest land: 1) for its public scenic value or 2) pursuant to a clearly delineated Federal, State or local government conservation policy; and will yield a significant public benefit, or
- Preservation of an historically important land area or certified historic structure.

Utah Open Lands cannot accept term-limited easements.

Preference shall be given to those easements that protect land:

- With important concentrations of natural, historic and/or open space resources;
- Facing a high risk of conversion for development or unknown use;
- Adjacent to existing easements or other protected open space areas; or
- Containing a low level of existing development.

*** Conservation easements acquired by Utah Open Lands must result in a significant public benefit. In determining whether a transaction will result in a significant public benefit, the following factors should be considered:**

Uniqueness of the property to the area ▪ Intensity of land development in the vicinity of the property (both existing development and foreseeable trends of development) ▪ Consistency of the proposed open space use with public programs (whether federal, state or local) for conservation in the region, including programs for outdoor recreation, irrigation or water supply projection, water quality maintenance or enhancement, flood prevention and control, erosion control, shoreline protection, and protection of land areas included in, or related to, a government approved master plan or land management area ▪ Consistency of the proposed open space use with existing private conservation programs in the area, as evidenced by other land protected by conservation easement or fee ownership by nonprofit conservation organizations in the close proximity to the property ▪ Likelihood that development of the property would lead to or contribute to degradation of the scenic, natural or historic character of the area ▪ Opportunity for the general public to use the property or to appreciate its scenic values ▪ Importance of the property in preserving a local or regional landscape or resource that attracts tourism or commerce to the area ▪ Likelihood that Utah Open Lands or another land conservation organization or agency will protect additional and nearby or adjacent open space lands similar to the subject property ▪ Population density in the proximity of the property; or ▪ Consistency of the proposed open space use with a legislatively mandated program identifying particular parcels of land for future protection.

Owner Acknowledgement of condition

This is an IRS requirement if the easement is a gift for which a deduction will be claimed. The regulations require that this statement must clearly reference the baseline data. It must say, "in substance…this natural resources inventory is an accurate representation of [the protected property] at the time of the transfer." The statement must be notarized and signed by both grantor and representative of grantee.

Background Information

- Ownership information (name, address, and phone number of property owner)
- Historical information on the donation /acquisition (brief chronological description of events that led to the protection of the property)
- Summary of easement provisions (specific prohibitions, restrictions, retained rights, as derived from the language of the easement document)
- Purpose of easement
- Evidence of the significance of the protected property, as established either by government policy (include copies of documents) or by the long-term protection strategy developed by the grantee
- Corporate or agency resolution accepting gift (minutes of the meeting at which a gift is accepted or acquisition approved adequate)

Legal Condition

Some grantees include in the baseline data file:

- A copy of the signed, recorded easement document
- An assessor's parcel map
- A clear title statement or preliminary title report, noting any liens against the property that could compromise its natural qualities or invalidate the easement
- Copies of any other relevant easements or water rights associated with the property

Ecological Features

- An inventory or rate, endangered, and / or threatened species
- Reports from wildlife biologists or other specialists that document the status of significant natural elements
- A very general description of plant cover, soils, etc. *Include only those ecological features that the easement seeks to protect.*

Agricultural Values

- Intensity of grazing (can be determined by experts and expressed in "animal units" per acre)
- Level of pesticide use (The American Farmland Trust usually provides that the landowner must comply with all applicable federal, state, and local laws and regulations governing application of pesticides, herbicides, and other chemicals)
- Soil quality (The American Farmland Trust encourages landowners to ask the Soil Conservation Service to prepare a soil conservation plan; this serves as the easement's benchmark for acceptable practices or erodible land).
- *Grantees of easements over productive agricultural lands typically set a level of "acceptable" pesticide or herbicide use – a subject of constant debate. Another difficult task for agricultural easement grantees is defining when grazing becomes overgrazing. The local office of the Soil Conservation Service and similar local agencies may be able to help.*

Scenic Features

- Official policies citing property's scenic value
- Number of people who frequent nearby public places roads, trails, parks) from which they can view property

Man-Made Features

- Improvements (structures, buildings, trails, fences, wells, power lines, pipelines, irrigation systems, etc.
- Recreation, tourist attractions
- Trespass damage and disturbed land (stray animals, introduced species, evidence of vehicular trespass, etc.)

Man-Made Features

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- Recreation, tourist attractions
- Trespass damage and disturbed land (stray animals, introduced species, evidence of vehicular trespass, etc.)

Photographs

- Aerial photos, if appropriate (have aerial photos enlarged, if necessary, to correspond to the scale of maps included in the baseline data)
- On-site photographs (Be sure to record key photo points, and sign and date all photos)

Maps

- A state map showing easement location
- A 8$^{1/2}$"x 11" section of a local road map showing easement location
- The largest-scale US Geological Survey topographical map available (usually a scale of 1:24,000, called a 7$^{1/2}$ minute scale) showing easement boundaries

Surveys

Surveys generally are not required, but they may be required, especially if a property is smaller

General Appraisal Information for Landowners and their Attorney and Tax Advisors

The granting of a conservation easement will result in the permanent protection and restriction of the land; and you should not expect that at any time in the future this conservation easement may be amended or terminated. Federal tax law imposes very substantial limitations on Utah Open Lands' ability to modify or terminate the conservation easements we hold. Any future amendment or termination may require the review and approval of the Attorney General of Utah or a court of law.

Whether or not you expect to receive any tax benefits from granting a conservation easement, the terms of the easement must comply with §170(h) of the Internal Revenue Code. While Utah Open Lands tries to ensure that the conservation easements that it accepts do comply with tax law, the ultimate responsibility for this is yours. Your legal counsel should familiarize themselves with recent tax court decisions regarding future building rights on conserved lands, amendments, and proceeds allocation rules.

- In general, you should be aware of the timing of the appraisal; the appraisal cannot be done more than 60 days prior to the date the gift is made; or if after the gift is made, the effective date must be dated the day of the donation.
- As per the Utah Land Conservation Easement Act 57-18(4) the owner of real property for which the conservation easement is granted shall deliver to the assessor of the county in which the property is located, a copy of the conservation easement and proof that the conservation easement has been recorded within 10 days after a conservation easement is recorded.
- If you are seeking tax benefits for your grant of a conservation easement, you will need to retain an appraiser who is a qualified appraiser with experience in appraising conservation easements. 1) Any gift over $5,000.00 requires the submittal of an 8283 form. 2) Utah Open Lands will need a copy of the appraisal prior to signing an 8283. 3) This form requires an appraisal that meets the requirement set forth under 170(h) of the IRS code.
- We inform all landowners that Utah Open Lands will not knowingly participate in a project where it has significant concerns about the tax deduction and reserves the right to refuse to sign Form 8283 if it believes, in good faith, (a) that a charitable contribution of the conservation easement has not been made (e.g., you were paid full value for the conservation easement; your conservation easement was required by a governmental regulation; you granted your conservation easement as a part of a contractual obligation, etc.); (b) that there is reason to believe your conservation easement may be substantially or grossly over-valued (as those terms are defined for federal tax purposes, in which case you may be subject to quite substantial penalties; or (c) that your appraisal or the grant of your conservation easement was in some manner fraudulent.

Form 8283 and the Appraisal Are the Donor's Responsibility:

You as the landowner are solely responsible for meeting all IRS substantiation and legal requirements. While the land trust's signature on Form 8283 does not represent agreement with your claimed value, land trusts have an ethical responsibility to avoid participating in abuses of the tax policies. Utah Open Lands is not responsible for any loss, damage, or expenses you may incur in defending the value or deductibility of your conservation easement contribution, regardless of Utah Open Lands' receipt of your "qualified appraisal" or any terms or provisions in your conservation easement. The sole responsibility for the federal income tax deductibility of your conservation easement grant, and the amount of any such deduction, is yours.

Donations Have Been Disallowed in Full for Incomplete Gift Substantiation

The IRS has denied in full dozens of charitable conservation contributions, and the courts have assessed and sustained up to 40 percent penalties for technical failures in the appraisal and substantiation documents. Don't become a statistic. Be sure you and your legal and tax advisors review and understand the requirements of IRC §170 and the accompanying Treasury Department regulations.

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What is the Stewardship Fund?
The Stewardship Fund is a Utah Open Lands Fund specifically designated for use to monitor and protect lands we hold under our stewardship either in fee or as protected by conservation easements.

Why is it needed?
With every conservation easement, Utah Open Lands accepts the responsibility to monitor, enforce and defend that easement forever. The perpetual costs associated with monitoring each easement are a significant and necessary liability to Utah Open Lands, necessary because this is what we do and this is how land is preserved in perpetuity. Consequently, the liability is not only expected but also welcomed and the associated financial responsibilities are taken very seriously.

How Does the Fund Work?
Under IRS guidelines a conservation easement gift must be accompanied by a baseline documentation for the property as well as a commitment by the qualifying entity that it has the requisite resources to forever enforce and protect the conservation easement. A Stewardship contribution to Utah Open Lands includes funding for the Stewardship Fund as well as funding necessary to prepare the baseline documentation and other documentation required prior to the recordation of the conservation easement. Therefore a contribution to Utah Open Lands for stewardship is a one time contribution that includes the upfront costs of the baseline documentation as well as the needed resources for perpetual preservation.

The purpose of the Stewardship Fund is twofold: to provide monies to monitor lands protected by conservation easements and to provide financial ability to defend our lands and conservation easements against lawsuits, if any should ever occur. Stewardship endowments from every conservation easement donation are pooled together into one account. Currently, the interest earned on this account is reinvested to build the principal. Our goal is to build a fund to ensure our protected lands in perpetuity.

The interest will eventually be sufficient to cover the projected annual monitoring expenses for each easement. The corpus will continue to be held in reserve to be used in legal defense of our easements.

We hope to never have to use the corpus and intend to minimize the risk of any lawsuits through careful and consistent monitoring, general conservation education and good landowner relations. UOL's annual operating fund currently covers it stewardship expenditures in order to build up the fund as quickly as possible.

How Are the Funds Raised?
Utah Open Lands is always working to raise money for our stewardship fund. Without Stewardship dollars in place the Utah Open Lands Board may not approve the final transaction. It is our policy to ask easement donors to consider a gift to Utah Open Lands' stewardship fund. Utah Open Lands also factors stewardship costs into every project we work on and request that foundations and donors give in part to that fund when we are protecting a beloved community landscape. In addition, UOL fundraises specifically for the stewardship fund annually from individuals, foundations, and others.

How are Stewardship Costs Calculated?
Factors considered when calculating a stewardship endowment fund:

- size and accessibility of the parcel – specific number of acres restricted by conservation easement and number of miles required to drive to and from the parcel and to drive the entire parcel;
- types of adjacent land uses;
- terms of the restriction, including permitted uses and anticipated frequency of review and approval;
- number of reserved home sites;
- photographs; and
- staff time to monitor and write the baseline documentation report.

It has been Utah Open Lands' and other land trusts' experience that reserved future home sites add significantly to the amount of stewardship staff time required for a property. Home sites existing at the time an easement is conveyed also increase the staff's or volunteer's time on the property. Easements with no reserved or previously existing home sites require significantly less stewardship time and money.

It is Utah Open Lands' goal that annual stewardship costs will eventually be covered by the stewardship fund. We estimate that an annual rate of 4% will be adequate to cover the annual stewardship costs.

Is a Stewardship Gift Required by Utah Open Lands?
The requested stewardship amount is by no means a requirement of a conservation easement gift. Some landowners may not have the ability to contribute an easement as well as a stewardship gift. However, it is strongly encouraged as a means of ensuring that an easement, and consequently the land, is protected in perpetuity. Some easement donors want to help by giving the entire amount up front while others choose to make a pledge to pay the requested amount over several years.

Can Anyone Make a Contribution to Utah Open Lands' Stewardship Fund?
Certainly. In addition to easement donors, there are many people who feel strongly about stewarding and protecting a land trust's conservation easements, and many, if asked appropriately, might be willing to make a gift to the stewardship fund. Since Utah Open Lands is recognized by the IRS as a 501(c) 3 charitable, non-profit organization, all donations are tax deductible.

For landowners, donating a conservation easement is a way to protect places they love. It's also a major financial decision. When landowners donate a conservation easement, they give up part of the value of their property — often their family's biggest asset. Tax incentives offset some of that loss in property value, making conservation a viable option for more landowners.

Landowners and land trusts should be aware that the improper use of federal income tax deductions for both land and conservation easement donations can involve potentially abusive tax shelters.

How to Use the Federal Conservation Tax Deduction

In 2015 Congress enacted one of the most powerful conservation measures in decades: the enhanced federal tax incentive for conservation easement donations.

The permanent conservation easement tax incentive is a powerful tool that helps Americans conserve their land voluntarily.

If you own land with important natural, agricultural or historic resources, donating a conservation easement can be a prudent way to both save the land you love forever and to realize significant federal tax savings.

Frequently Asked Questions

How does the permanent, enhanced tax incentive work?

If a conservation easement is voluntarily donated to a land trust or government agency, and if it benefits the public by permanently protecting important conservation resources, it can qualify as a charitable tax deduction on the donor's federal income tax return.

The tax incentive (made permanent in 2015) benefits to landowners by:

- The deduction a donor can take for donating a conservation easement is 50% of his or her annual income;
- The carry-forward period for a donor to take a tax deduction for a conservation agreement is 15 years; and
- Allows qualifying farmers and ranchers the ability to deduct up to 100% of their income.

Easements vary greatly in value. In general, the highest easement values are found on tracts of open space under high development pressure. In some jurisdictions, placing an easement on one's land may also result in property tax savings for the landowner.

What is an example of the financial benefit that the permanent tax incentive provides a landowner?

A landowner earning $50,000 a year who donated a $1 million conservation easement is allowed to deduct $25,000 (50% of income for the year of the donation and for each additional 15 years.

This would result in a total of $400,000 in deductions. If the landowner is a farmer or rancher, he or she can deduct $50,000 (100% of income) in the first year and then for each of the following 15 years, realizing a maximum of $800,000 in deductions.

Can anyone deduct more than the value of his or her gift of an easement?

One can never deduct more than the fair market value of the gift. The permanent incentive simply allows landowners to deduct more of that fair market value.

Who qualifies as a farmer or rancher?

The 2015 law defines a farmer or rancher as someone who receives more than 50% of his or her gross income from "the trade or business of farming." The law references IRC 2032A(e)(5) to define activities that count as farming, including:

- Cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training and management of animals) on a farm;
- Handling, drying, packing, grading or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant or operator of the farm regularly produces more than one-half of the commodity so treated; and
- The planting, cultivating, caring for or cutting of trees, or the preparation (other than milling) of trees for market.
- For an easement to qualify for a farmer or rancher, it must contain a restriction requiring that the land remain "available for agriculture." This provision also applies to farmers who are organized as C corporations. Additionally, Alaska Native Corporations are eligible as farmers or ranchers.

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Do these changes apply to gifts of land?

The incentive does not apply to gifts of land in fee. It only applies to gifts that qualify under IRC 170(h)(2), such as conservation easements. A landowner considering the donation of land should consult an attorney to determine whether the structure of his or her gift should be changed to take advantage of the permanent incentive.

What other restrictions apply?

Conservation easement donations must comply with "conservation purposes" as defined in IRC 170(h). A donated easement must be a true gift. It must protect significant natural, agricultural or historic resources that public agencies or land trusts want to have conserved. A donated easement cannot serve to simply prevent development on a property or be part of a "quid pro quo" agreement in exchange for a government action, such as issuance of a building permit or a zoning change.

Will donors who use this provision be audited by the IRS?

Taking advantage of the 2015 tax incentive law should not affect one's likelihood of being audited. However, all donors should note that the IRS does pay attention to donations of property that are high in value, including donations of conservation easements.

This makes it important for donors and their advisors to know and follow the law, utilize a reputable professional appraiser who has experience in the appraisal of conservation easements and donate to a well-established, reputable land trust that has adopted and implemented *Land Trust Standards and Practices*.

What is the role of the land trust?

Potential easement donors should know that donating a permanent conservation easement is a big commitment requiring careful consideration and independent legal advice.
Donating a conservation easement requires a working partnership with a land trust — and time for careful drafting of documents and maps, baseline documentation and a professional appraisal. Landowners should understand that a land trust may decline to accept a donation that does not meet both the legal requirements and the land trust's own specific charitable mission and strategic plan. In addition, land trusts will want to see the appraisal before accepting your gift.

Other information of note:

A 2006 law (PL109-280) redefines who is a "qualified appraiser," so appraisers need to show donors that they are qualified under the new law, which states that a qualified appraiser must "demonstrate verifiable education and experience in valuing the type of property subject to the appraisal."

The 2006 law also tightened the rules for easements on "certified historic structures." If you are protecting a property that includes such a structure, new regulations, including a filing fee and specific appraisal requirements may apply to you.

Substantiating charitable gifts can be quite complicated. As cited in Utah law, retaining an attorney or accountant familiar with the Treasury's requirements is advised prior to claiming a charitable deduction for contributions, such as conservation easements.

This tax incentive information is NOT meant to provide legal counsel or advice. To obtain a correct calculation, property owner's should consult with their tax attorney.

An Appraisal Report Should be Understandable to You

Appraisals that diverge from local real estate values are a potential warning sign for landowner(s) and land trusts alike. Here are some questions the landowner or the land trust might ask:

a. Is the appraisal generally in-line with your and the land trust's sense of local real estate values?
b. Is the appraisal aggressive in its conclusion of value based on an informed experience of land values in the area?
c. Is the appraisal's value conclusion egregiously high, in the top range, in light of the *landowner's and land trust's general knowledge* of local land values? Or was no gift made (for example, the easement was granted to satisfy a governmental regulation)? Or is the gift described in the appraisal different from the gift received?

The following checklist may help you and your tax advisor and attorney identify potential problems with your appraisal.

☐ The appraisal valuation effective date must be no earlier than 60 days before the date of the contribution and no later than the date of the contribution. For an appraisal report dated on or after the date of the contribution, the valuation effective date must be the date of the contribution.

☐ The appraisal must include the qualifications of the appraiser and should contain a recitation of the appraiser's experience, specifically as it relates to appraising conservation properties and conservation easements.

☐ The appraisal must contain the name, address and taxpayer ID of *every* appraiser who participated in the appraisal. If the appraisal states that more than one appraiser reviewed the property or contributed in any way, all must sign the appraisal and Form 8283.

☐ The appraisal must include a statement that it was prepared for federal income tax purposes and should also include a statement that it was prepared in accordance with USPAP (Uniform Standards of Professional Appraisal Practice). This means, at minimum, that appraisals acquired for grant or other funding purposes must be retitled and dated appropriately.

☐ The appraisal reflects an accurate assessment of the physical characteristics of the land that reflect its value (for example, wetlands, ledge, road frontage, developable and undevelopable areas, views and other value enhancements, neighborhood location and so forth) and contains a good description of the property, its physical attributes and its location.

☐ The appraisal analysis reflects an understanding of the local land use regulatory framework.

☐ The recorded deed or conservation easement is attached to the appraisal (or the final pre- recorded deed, if the appraisal is prepared prior to recording).

☐ The appraisal demonstrates that the appraiser clearly understood the specific restrictions on the use of the property, if any, and took into account the permitted rights.

☐ For conservation easements, the appraisal uses the before and after methodology where there is no substantial record of sales of comparable conservation easements to document the deduction value. It should also state that no such comparable sales were found.

☐ For conservation easements, if the donor or a family member owns contiguous property, the appraisal addresses the entire contiguous property.

☐ For conservation easements, if the donor or a related person owns any property nearby or contiguous, the appraisal addresses the impact of the easement on the value of the other property (enhancement).

☐ The appraiser identifies each and every assumption with verifiable supporting data and facts.

☐ The appraisal is prepared, signed and dated by a qualified appraiser, an individual who declares on the appraisal summary that they:

- ☐ Hold themselves out to the public as an appraiser or perform appraisals regularly
- ☐ Are qualified to make appraisals of the type of property being valued because of their background, experience, education and membership in professional associations and other qualifications *described in the appraisal*
- ☐ Understand that a substantial or gross valuation misstatement resulting from an appraisal value that they know, or reasonably should have known, would be used in connection with a tax return may subject the appraiser to a civil penalty under IRC §6695A
- ☐ Are not an excluded individual, which generally includes the taxpayer or a party to the transaction, someone employed by the foregoing or a related person
- ☐ Understand that an intentionally false overstatement of the value of the property may subject them to the penalty for aiding and abetting an understatement of tax liability

Landowner Worksheet

The following information needs to be completed and returned to UOL as the first steps in our conservation process. Please answer all questions below. Completion of this form does not constitute Utah Open Lands' board approval and/or acceptance of any interest in the delineated property. Any questions on this form or other matters, should be directed to 801.463.6156 or Info@UtahOpenLands.org

You are asking Utah Open Lands to: (Check one of the following)

☐ Accept a Donation ☐ Provide funds to acquire

☐ Accept a Partial donation and provide remaining funds to acquire

☐ Accept land in conjunction with a Regulatory or zoning condition. (If selected: this parcel part of a development plan? ☐ Yes ☐ No

Of: (check one of the following) ☐ **Fee Title** ☐ **Conservation Easement**

Landowner Name of record:	
Contact Person:	
Mailing Address:	Property Address/Location: (on tax notice)
Email:	Phone number:
Parcel No.(s):	Acreage:
Current Use:	

Landowners are:

☐ Individuals*; ☐ C-Corporation; ☐ Grantor Trust; ☐ Partnership; ☐ Multi-member LLC; ☐ Limited Partnership run by a General Partner; ☐ S-Corporation; ☐ Non-grantor Trust;
☐ Other (explain):

If Individuals: Is substantially all (over 90% of interest) owned by members of a family?
☐ Yes ☐ No

I understand that Utah Open Lands reviews each donation and any supporting appraisals to ensure compliance with federal and state tax requirements. I acknowledge that UOL may request documentation regarding my entity or ownership structure and may require a signatory attestation of its structure. I also understand that UOL may raise questions about the value or appraisal and may decline to participate in transactions that appear unusually high in value, involve pass-through entities, or exhibit characteristics of a syndicated or promoted tax transaction.

☐ I understand

How long have you owned the property?
Are the Mineral interests severed from the property?
Are there trails currently on this property open to the public?
Will this property be publicly accessible?
Are there trails, trailheads, or public viewing areas contemplated for this property?
What is the proximity of this property to other protected lands (county, state, federal, non governmental)?
What is the proximity of this property to development or planned development?

Landowner Worksheet *continued*

Time Frame for preservation:
Has the property been appraised? When:
Was the appraisal for a conservation easement or fee title?
When was the most recent title report issued?
Are there title issues you are aware of which would prevent a grant of conservation easement?
Are there liens or mortgages on the property, and if so can they be made subordinate to the easement?
Of the existing easements on the property are there rights of way/easements?

Documents you could provide to UOL for Baseline Documentation work (check the following)

☐ Aerial map ☐ Topo map ☐ Plat map ☐ Wildlife studies ☐ Survey ☐ Legal description

Is this open space being dedicated as part of a planned development or through a regulatory process requiring that a certain amount of acreage be set aside?
Are you willing to contribute to Utah Open Lands Stewardship Fund, specifically for this property?
Have you contacted any other organizations about the preservation of your land? If "yes", which ones: Why are you not working with any of the above organizations?
Are you aware of any toxic or hazardous materials on the property? ☐ Yes ☐ No ☐ I am not sure
By initialing here you are giving Utah Open Lands authorization to represent to our funding partners your land preservation as a Utah Open Lands Project.
☐ I agree to review and understand the compendium Utah Open Lands' LANDOWNER GUIDE

What continued uses and reserved rights do you want to maintain or establish on the Property?

☐ Farming Ranching Activities; ☐ House / Cabin Site(s) How many? _____ ☐ Family Use

☐ Other:

I have answered the above questions to the best of my knowledge:

_____

Signature date

Thank you for your interest in working with Utah Open Lands (UOL) on a conservation project. You should be commended for your effort to save Utah's beautiful country. We appreciate you considering Utah Open Lands to help you work through the possibility of protecting your land. To fully understand the project, UOL needs to evaluate both the property and the project itself.

For Utah Open Lands to make an informed decision about your property and the project, we will need to make a site visit. During this site visit and throughout our process, we will discuss the project with you to ascertain your goals.

Before this site visit occurs, it is critical that we gather some preliminary information about the property. We have enclosed our Landowner Guide which aside from relevant information regarding Utah Open Lands and the necessary process for conservation is a ***worksheet you will need to complete and return.***

It is critical that we obtain this information before the site visit so that we can begin to understand the project.

Once we have received the above information and completed the site visit, UOL staff and board will review the project in order to determine if the project is one that we can undertake.

Please note that regardless of whether Utah Open Lands accepts the project, there are costs associated with any conservation project. These costs include expenses that a landowner incurs in obtaining necessary title information and appraisal work as well as costs Utah Open Lands must cover in order to insure our capacity to safeguard your project. These costs include the baseline documentation required for the conservation easement, the easement drafting and staff time reviewing and engaging the project and a stewardship cost associated with all conservation easement transactions.

Utah Open Lands is very pleased that you are considering the contribution of a conservation easement on your property. Granting a conservation easement is a very serious step and will result in the permanent protection and restriction of the land. Federal tax law imposes very substantial limitations on Utah Open Lands' ability to modify or terminate the conservation easements we hold. Any future amendment or termination may require the review and approval of the Attorney General of Utah or a court of law.

Whether or not you expect to receive any state or federal tax benefits from the grant of your conservation easement you should be aware, the terms of the easement must comply with §170(h) of the Internal Revenue Code. You will need to retain an appraiser who has experience in appraising conservation easements. Utah Open Lands will need a copy of the appraisal prior to signing an 8283. This form requires an appraisal that meets the requirement set forth under 170(h) of the IRS code. Utah Open Lands reserves the right to refuse to sign your Form 8283 if it believes, in good faith, (a) that a charitable contribution of the conservation easement has not been made (e.g., you were paid full value for the conservation easement; your conservation easement was required by a governmental regulation; you granted your conservation easement as a part of a contractual obligation, etc.); (b) that there is reason to believe your conservation easement may be substantially or grossly over-valued (as those terms are defined for federal tax purposes, in which case you may be subject to quite substantial penalties; or (c) that your appraisal or the grant of your conservation easement was in some manner fraudulent. Be sure to find out from your chosen appraiser whether he/she is qualified to appraise conservation easements.

Continued...

In general, you should also be aware of the timing of the appraisal; the appraisal cannot be done more than 60 days prior to the date the gift is made; you should use an appraiser who follows Uniform Standards of Professional Appraisal Practice. See page 11 of this guide for more detailed information.

The sole responsibility for the federal income tax deductibility of your conservation easement grant, and the amount of any such deduction, is yours.

Utah Open Lands is not qualified to give tax, estate planning, real estate, or accounting advice to assist you in evaluating these benefits, and we strongly encourage you to seek outside professional advice.

We feel that it is not only important for us to make sure that we are the right organization for your needs, but for you to do so as well. The Landowner Guide includes some information about us, our mission and goals, as well as information concerning some of the projects that we have completed. If there are any questions about Utah Open Lands or anything else, please feel free to call me at (801)463-6156.

Sincerely yours,

Wendy E. Fisher
Executive Director

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