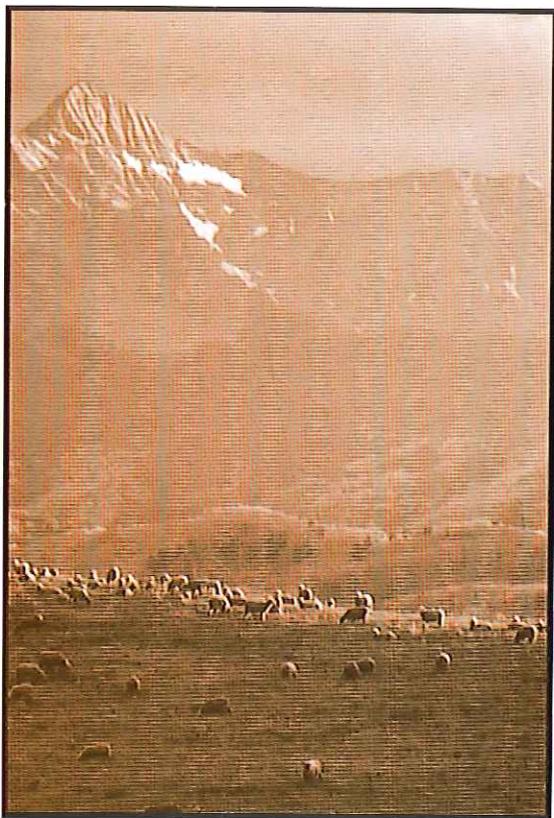


SAN MIGUEL COUNTY

LAND CONSERVATION OPTIONS



A Landowner's Guide

ACKNOWLEDGMENTS

Landowners and Their Stories

San Miguel County Planning Department

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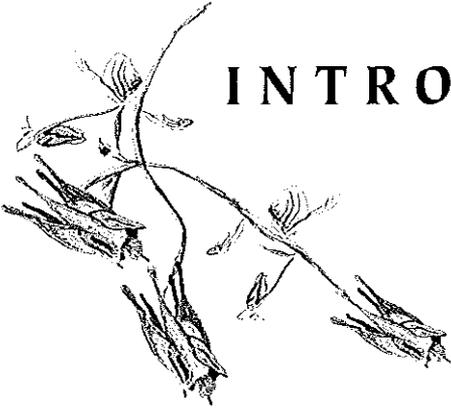
A special thanks to photographers – Ace Kvale, Bill Ellzey, Joe Powell, Doug Berry, Dean Stindt and C. Tomlinson for their visions of open spaces in San Miguel County.



Photo by Joe Powell

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INTRODUCTION

Open Space: An Important Resource for San Miguel County Residents

Open space is important to the quality of life for County residents. Not only is San Miguel County one of the most scenic areas in the State of Colorado, but much of the County economy is based on the preservation of agriculture, open space, scenic views and wildlife.

Because of increasing development pressure in the Telluride region, San Miguel County is in danger of losing open space and its historically rural and agricultural lifestyle. Preserving open space is a way to protect the character and culture of particular communities within the County. For

example, maintaining agricultural lands in the west end of the County will help ensure the survival of the traditions and customs of the ranching and farming culture.

Preserving the County's scenic panorama of mountains and mesas - its rocky canyons have long attracted individuals as rugged as the landscape - is also vital to the local economy. If we lose our wild places, if all our mesas, canyons, rivers, creeks and wildlife habitats are covered with roads, houses and cars, the



Photo by: Ace Kavale

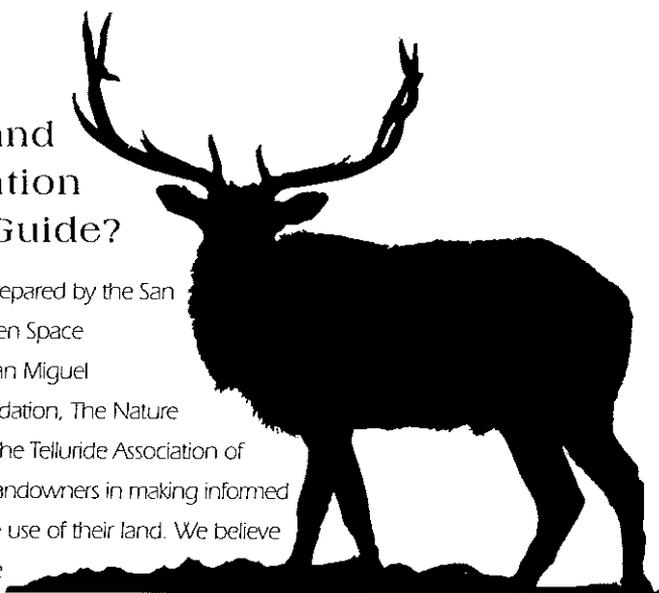
magnificence of the San Miguel and Dolores River Canyons will be permanently tarnished. The preservation of San Miguel County's heritage and open space makes sense for everyone.

Why Should I Consider Land Conservation Options?

Federal estate taxes can amount to as much as 55% of a property's fair market value, virtually forcing heirs to sell all or part of the deceased owner's land to pay taxes. Future owners may be enticed by ever-increasing property values, or simply by a lack of appreciation for the land, to sell it for development. There are many ways you can protect your land and ensure that its agricultural, conservation, scenic and other open space values remain intact for your children. The conservation techniques briefly described in this booklet provide various options to protect your land that may make financial sense for you and your family. However, you should choose what makes the most sense for you, your family and your land, and you must plan ahead.

Why a Land Conservation Options Guide?

This booklet was prepared by the San Miguel County Open Space Commission, the San Miguel Conservation Foundation, The Nature Conservancy, and the Telluride Association of REALTORS to assist landowners in making informed decisions about the use of their land. We believe landowners are the





best stewards of their land. The people we have talked to want to protect their land as well as their investment and family heritage. We believe there is a need for a guidebook to inform landowners about land preservation options, many of which are designed to preserve

open space while keeping it in private ownership.

The land protection methods described in this booklet have been used by thousands of landowners to protect millions of acres across the nation. Many of these protected lands remain in private ownership, as working farms, homes, forests, ranches, recreational areas or nature preserves. In each case, the method by which the land was protected depended on the wishes of the landowners and resources of the land. The people who protected these properties share a desire to keep the land's special qualities intact for their children and for future generations.

Your decisions to protect land require careful consideration of the special features of your property, your land conservation goals, your financial situation and your family's needs and wishes. We encourage you to discuss your individual needs with the appropriate legal, accounting and planning professionals. Land trusts such as the San Miguel Conservation Foundation, The Nature Conservancy and others can provide you with additional information and valuable assistance to accomplish the goals for you and your land.

What San Miguel County will look like in the future is being decided day-by-day, parcel-by-parcel, by landowners like you. Land conservation is an area where you can make a difference.

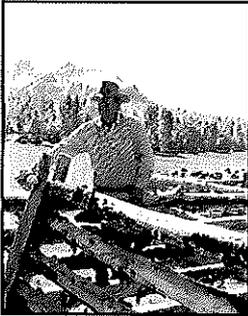
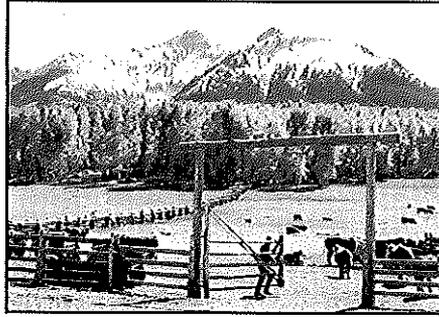


THE LAST DOLLAR RANCH

USA Today called the historic Last Dollar Ranch on Dallas Divide "one of the nation's most picturesque ranches."

Indeed it is, as evidenced by the number of photo shoots on the ranch and of its homestead. Vince and Joan

Kontny, recognizing the ranch's unique beauty and history, have completely restored all the log barns and the Victorian house, documented the ranch history in a published book, and protected it from all development in perpetuity with a conservation easement.



"Many working ranches in San Miguel County that have been in families for generations are being sold for development. This deprives wildlife of critical habitat, destroys open space that so many people associate with Colorado, and takes good agricultural land out of production.

The protection of Last Dollar Ranch insures that its magnificent vistas will be there for all future generations. It is a great legacy to leave to the community and the nation."

Vince Kontny



CHAPTER 1

CONSERVATION EASEMENTS

What is a Conservation Easement?

A “conservation easement” is a legal agreement between a landowner and a qualified conservation organization or government agency that permanently limits the uses permitted on a piece of property by current and future owners in order to protect its conservation values.

What are the Advantages of a Conservation Easement?

A conservation easement can make a critical difference in a family’s ability to pass land from one generation to the next. This flexible tool protects land while leaving it in private ownership. A conservation easement offers several advantages:

- Fee title to the property remains in the ownership of the landowner, who may continue to live on it, sell it, or pass it on to heirs.
- A conservation easement may result in significantly lower estate taxes—sometimes making the difference between heirs being able to keep land in the family and their needing to sell it. In addition, a conservation easement can provide the landowner with income tax deductions and, in many cases, a reduction in property taxes.

easement can provide the landowner with income tax deductions and, in many cases, a reduction in property taxes.

- A conservation easement is a flexible agreement that can be written to meet the particular needs of the landowner while protecting the property's resources.
- A conservation easement is a permanent restriction, remaining in force even after the land changes hands. A land trust (private, non-profit organization) or government entity ensures that the restrictions are followed.

How does a Conservation Easement Work?

When you own land, you "own" many rights associated with it. These include, for example, rights to harvest timber, build structures, and grow crops (subject to zoning and other restrictions). When you donate or sell a conservation easement to a land trust or government agency, you permanently give up some of those rights. For example, you might give up the right to build additional residences, while retaining the right to grow crops. Future owners also are bound by the easement's terms.

Conservation easements can be used to protect a wide variety of land, including farms, forests, historic areas, ranches, wildlife habitats, and scenic views. Conservation easements may be called agricultural preservation easements, historic preservation easements, scenic easements, or forever wild easements, depending on the resources protected.

A conservation easement is memorialized in a detailed legal agreement outlining the rights and restrictions on the uses of the property and the responsibilities of the landowner and the land trust or government agency that holds the easement.



Can Conservation Easements be Flexible?

Yes. The landowner and prospective easement holder — a land trust or government agency — can tailor the easement terms to meet the financial and personal needs of the landowner while protecting the land's conservation values. Thus, each easement agreement is a unique document. For example, limitations may be made on the number and location of structures or the types of land use activities allowed.

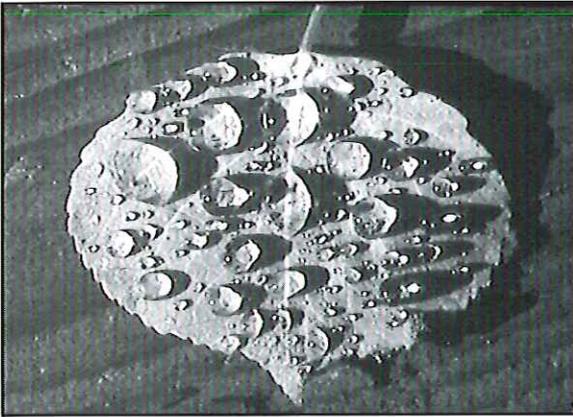


Photo by: Ace Kavelle

A conservation easement can serve as a flexible tool in a family's financial planning. The easement may limit development on a portion of the property and permit development of the remaining part as long as the natural or

historic resources of the protected area are not impaired. It may allow some building within the area under easement, consistent with the easement's conservation objectives. A conservation easement can also be combined with other protection methods.

How are Conservation Easements Enforced?

The land trust or government agency receiving the easement takes on the permanent responsibility to enforce the terms of the easement. It will monitor the easement by inspecting the land regularly (yearly in most cases) and talking to the landowner about plans for the property in order to avoid conflicts with the terms of the easement. If an owner or someone else violates the easement — for example, by erecting a structure that is prohibited by the easement — the land trust will take action to correct the violation, including going to court if necessary. Because these permanent

monitoring responsibilities result in continual cost to the land trust, the land trust may request a donation from the easement donor to help pay for such enforcement costs as well as future stewardship expenses.

How Are Conservation Easements Transferred?

I. LIFETIME DONATION OF A CONSERVATION EASEMENT

By far the most common way to convey a conservation easement is for a landowner to donate it outright to a land trust or government agency during the landowner's lifetime.

Land donated to a land trust or government entity for conservation is truly one of the finest legacies a person can leave to future generations. Communities across the country are enjoying nature preserves, recreation areas, and other open space today because of the foresight and generosity of landowners who have made gifts of their land. Land may be donated either during your lifetime or by will.

II. DONATION OF A CONSERVATION EASEMENT BY WILL

A conservation easement can also be donated by will. You won't receive the income tax and property tax benefits you might have had if you had donated the easement during your lifetime, but estate taxes will be reduced just as they would be with a lifetime donation. (Tax benefits are discussed in Chapter 5.)

As with an easement donated during your lifetime, it is important to discuss the specific permitted and prohibited uses that you wish to

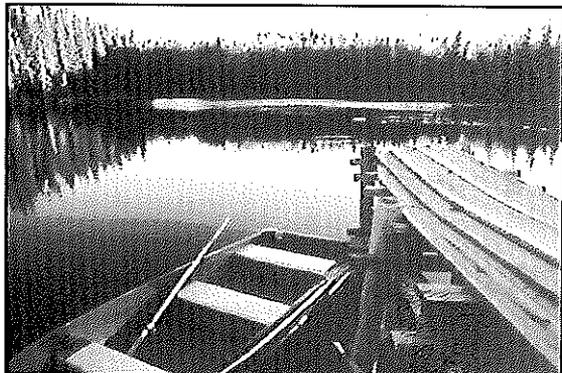


Photo by Alec Kovalic

include in the easement with a conservation organization and to specifically state those uses in your will.

Because the specific language of a gift of an easement can take some time to negotiate, the executor of your will should be authorized to complete the easement in the event you die prior to its completion.

By including a conservation easement in your will you can reserve the flexibility to change the terms of your will if you are uncertain about whether to protect the land, if there are family conflicts about what should be done with the land, if your financial situation changes, or if you simply decide at some later point that you would like to give the land greater or less protection (even to eliminate the easement bequest altogether). In the meantime, if something were to happen to you, you will have at least protected the land and lowered estate taxes on it.

Further, under the new estate tax laws, your executor or heirs may elect to grant a conservation easement after the date of your death and your estate would receive the same estate tax benefits as if it had been granted by will.

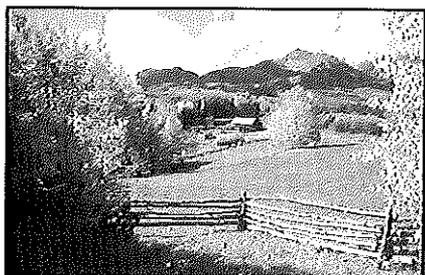
III. SELLING A CONSERVATION EASEMENT

Although by far the most common way to convey easements is through donation, a nonprofit organization or land trust may purchase easements.

Conservation easements are also sometimes purchased in a bargain sale (a sale at less than fair market value) or given in return for a charitable gift annuity (in which the landowner transfers the easement to the land trust, and the land trust agrees to make regular, fixed payments over several years; see Chapter 2). However, you should note that selling a conservation easement at full value rules out a charitable deduction, and usually triggers a capital gains tax on the income received from the sale.



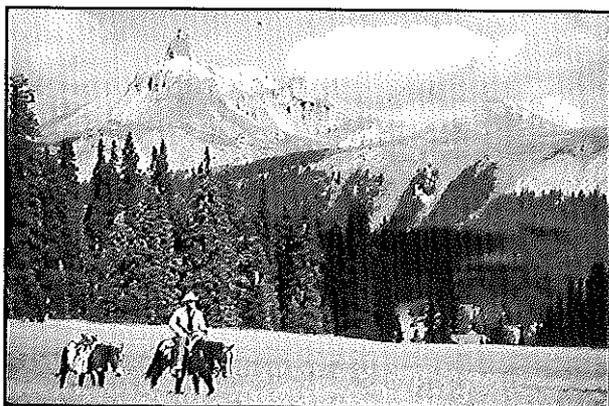
SKYLINE RANCH



“Our 1972 conservation easement with The Nature Conservancy allowed our family to preserve for future generations the extraordinary beauty, peace, and serenity

of Skyline Ranch. This was Colorado’s first conservation easement with the Conservancy and it continues to delight us when we learn that others have also donated their development rights to land conservation organizations.”

Dave and Sherry Farny





CHAPTER 2

DONATING LAND

Why Donate Land?

Donating land is often attractive to landowners who:

- have land with significant conservation values and who do not have heirs, or whose heirs cannot or will not protect it;
- own property (such as a vacation retreat) that they no longer use;
- own highly appreciated property the sale of which would result in large capital gains taxes;

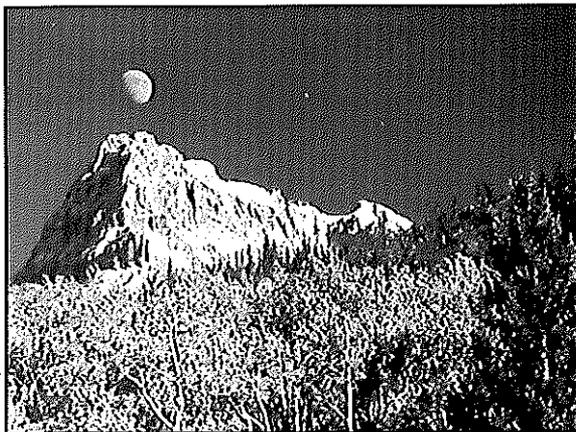


Photo by: Ace Kavelle

- have substantial real estate holdings and wish to reduce estate tax burdens; or
- want to be relieved of the responsibility of managing and caring for land that they otherwise treasure.

An outright donation of land has several benefits as it:

- is a relatively simple transaction;
- releases you from the responsibility of managing the land;
- provides substantial income tax deductions and estate tax benefits (while avoiding any capital gains taxes that would result from selling the property); and
- can permanently protect the land.

Land that has little conservation value or does not need to be owned by a conservation agency in order to be protected can also be donated to a land trust, with the understanding that it may be sold, with development restrictions if appropriate, and the land trust may retain all sale proceeds to help support the land trust's conservation programs.

Options When Donating Land

I. DONATING LAND TO BE RESOLD WITH A CONSERVATION EASEMENT

In some cases, ownership by a land trust may not be the best long-term protection strategy for your property. If private ownership is most appropriate for the property (for example, if it is a ranch or wooded lot), the land trust may accept the land, place restrictions on it in the form of a conservation easement, and resell it. The land is then protected by the easement, the land trust's management costs are reduced, and the land trust can use the proceeds from the sale for future conservation work. The donor can take a charitable deduction for full fair market value and avoid the capital gains taxes imposed when other land owned by the donor is sold.

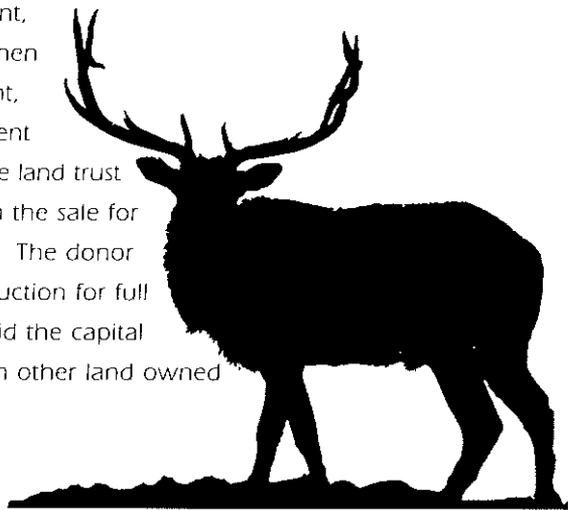
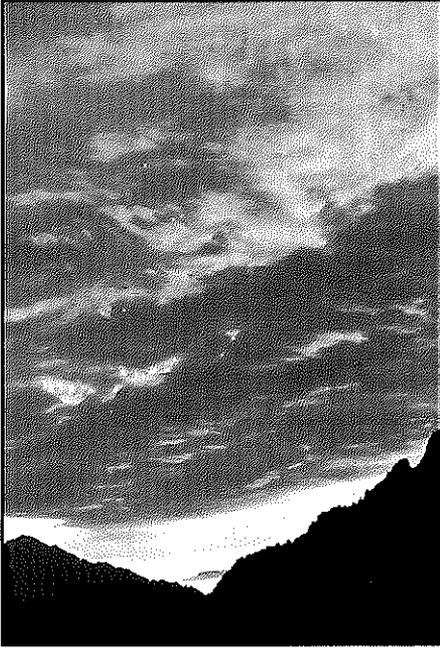


Photo by: Ace Kavelle



II. LIFE ESTATES

You can donate land but continue to live on it by donating the fee interest in the property while reserving a life estate. The way this works is that you donate the property during your lifetime, but reserve the right for yourself and certain other named persons to continue to live on and use the property during their lifetimes. If you donate to a land trust a "remainder interest" in the property, then when you (or other users you've specified) die or release the life estate(s), the land trust will have full title and control

over the property.

This approach offers a number of advantages. With a reserved life estate, you can continue to enjoy your land, but — because the deed is transferred during your lifetime — you gain assurance that the organization of your choice has accepted your land for protection. Finally, a gift of a remainder interest may entitle you to an income tax deduction when the gift is made.

III. CHARITABLE GIFT ANNUITY

A charitable gift annuity is a contract under which the donor agrees to transfer certain property to a charity, such as a land trust, and the charity agrees to make regular annuity payments to one or more beneficiaries for life. The annuity payments are a set amount, usually ranging from 6.5% to 8.5% of the value of the contributed property.

Your gift of land or other property qualifies for a charitable income tax deduction at the time of the gift; the amount of the deduction is based on the value of the land donated, less the expected value of the annuity

payments, determined from IRS actuarial tables. (As with remainder interest donations, the deduction is larger if the persons receiving the annuity payments are older.)

You also avoid much of the capital gains tax that would have resulted from a fair market value sale of appreciated property. Although capital gains tax would be assessed against the annuity payments, the capital gains tax that is owed can be spread over the donor's lifetime.

Charitable gift annuities are not, in and of themselves, a land protection tool, but the financial and tax incentives they provide can help make land protection feasible. The most common way to protect land through a gift annuity is to combine it with a conservation easement. You can first donate a conservation easement on the land to one land trust, then grant the land to a second land trust in return for the gift annuity. Or you can grant unrestricted land to the land trust that will set up the gift annuity, and the land trust can sell the land subject to a conservation easement that it establishes. In either case, the land trust generally will sell the easement-protected property to generate the proceeds needed to make the annuity payments. When the annuity obligation terminates, any surplus proceeds will support its conservation programs.

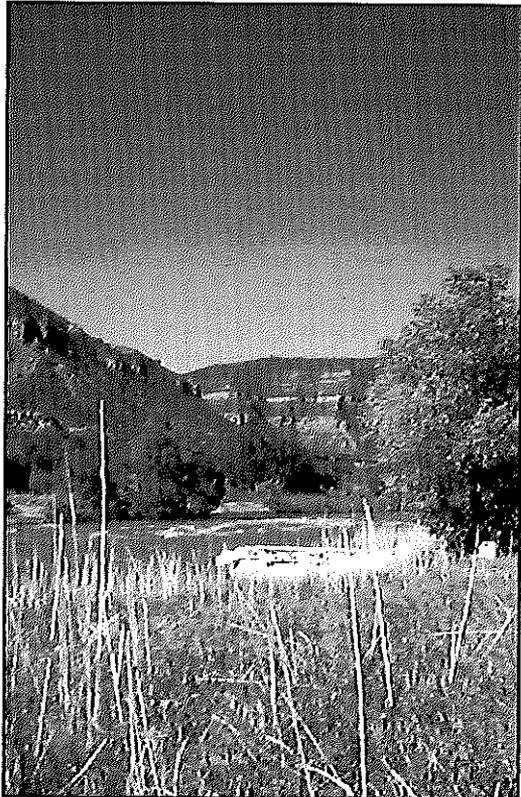
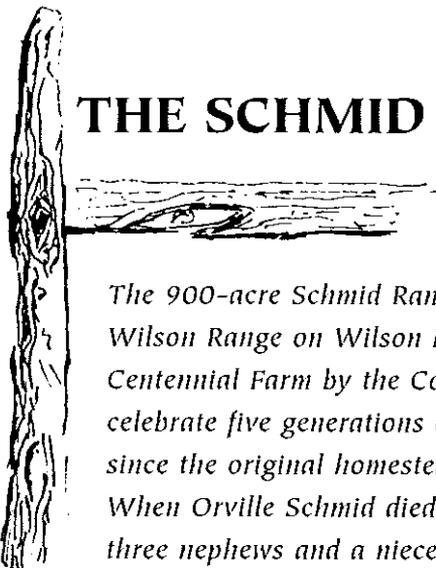


Photo by Joe Powell



THE SCHMID FAMILY RANCH

The 900-acre Schmid Ranch, located at the base of the Wilson Range on Wilson Mesa was designated a Centennial Farm by the Colorado Historical Society, to celebrate five generations of Schmid family ownership since the original homestead was established in 1882. When Orville Schmid died in 1994, he left the ranch to three nephews and a niece. The Schmid family worked with the San Miguel County Open Space Commission, the San Miguel Conservation Foundation and The Nature Conservancy to place a conservation easement on the ranch.

"This ranch is precious to me. We taught the children to love and respect the ground as their inheritance and to keep it as it has always been. In December 2002 I'll be 83 years old, and I am happy to know it's in a conservation easement and preserved for not only our family but other gatherings." — Clarice Schmid

"In 1992, we read this country was losing 9,300 farms and ranches per year, and we figured we were destined to become one of these statistics. To us, it was unthinkable to imagine losing our land, our heritage and our livelihood after 100 years of sacrifice by our family and ancestors.

We feel it is beneficial to everyone to protect this country's open space — especially agricultural land, and the greatest protection tool so far has been the conservation easement. Conservation easements are sometimes the only way a family can save their land from a forced sale or development."

— Cliff and Caryl Schmid

"My uncle Orville Schmid was into conserving this land since he was born. His will wanted us to keep this ranch just the way it is. I can't think of another way to do it other than placing a conservation easement on it.

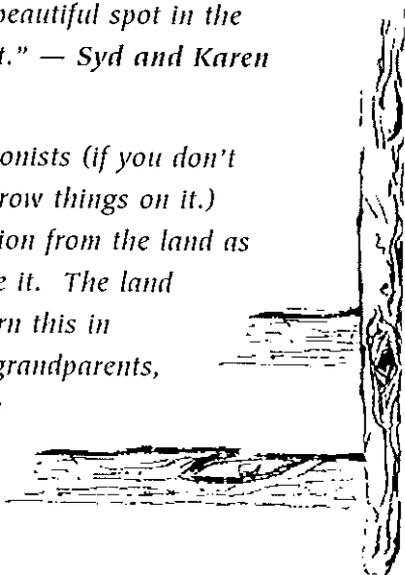


Photo by: Doug Berry

Preserving this land is my destiny. I've inherited the responsibility to follow out my family's wishes." — Marvin Schmid

"Wilson Mesa is where I grew up and where I call home; my roots are there. No matter where I live, the ranch is a place where I can go back to the basics of life, away from the jet age, back to the 3-mile-per-hour world that I grew up in. The conservation easement will put the ranch in a position where dollars will not overtake the good sense of preserving this most beautiful spot in the world from high density development." — Syd and Karen Schmid

*"Farmers are the original conservationists (if you don't treat your land properly you can't grow things on it.) Ranchers and farmers get an education from the land as to what needs to be done to preserve it. The land itself is a teacher, and you can't learn this in college. We are fortunate that our grandparents, parents and uncles taught us to love the land, respect the land, and to be caretakers of the land."
— Jane Schmid Westgaard*



CHAPTER 3

SELLING LAND FOR CONSERVATION PURPOSES



Selling your land at fair market value to a land trust or government agency may seem an obvious way to protect it. However, land trusts and government agencies are usually unable to buy conservation easements or land at fair market value. The resources of non-profit land trusts are limited, and they often reserve their resources for purchasing properties that have significant conservation values and are under imminent threat of development.

A fair market value sale is often not as advantageous for the landowner as it might seem. Capital gains taxes on the property's appreciated value along with selling costs such as the broker's commission may substantially reduce the profits from a fair market sale, particularly for landowners in higher tax brackets who are disposing of highly appreciated property. Fortunately, there are ways to close the gap between the funds the land trust or government entity has available and the price you'd like to receive.



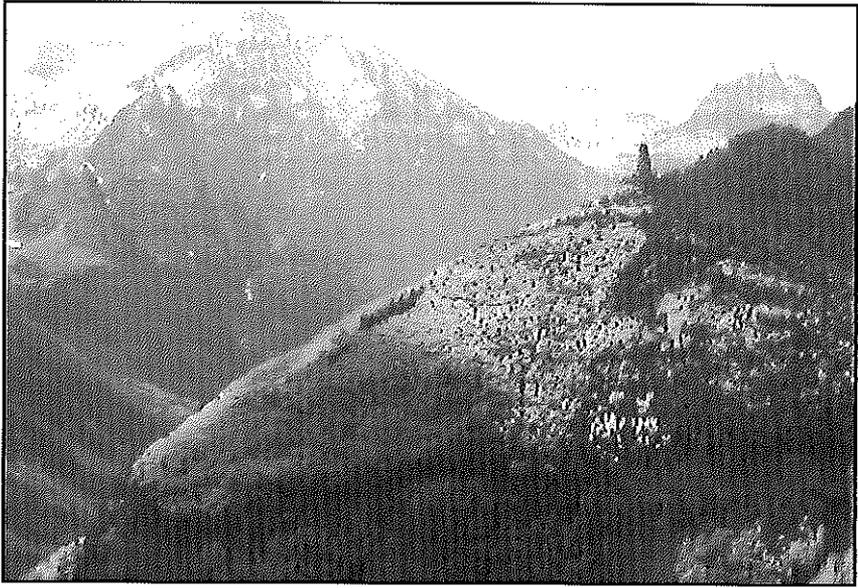


Photo by Ace Kavale

Options when Selling Land

I. BARGAIN SALE

One alternative to a fair market value sale is a bargain sale. In a bargain sale the land is sold at less than its fair market value resulting in the landowner having the income-producing benefit of a sale along with the tax-reducing benefit of a donation. The property owner can also avoid some of the expenses of an open market sale. The difference between the land's appraised fair market value and its sale price is considered a charitable donation to the land trust and can be claimed as an income tax deduction.

In cases where a land trust is unable to pay the fair market value of the property, a bargain sale may reduce the purchase price sufficiently to allow the land trust to afford it.

For any bargain sale, the landowner's intent to make a charitable donation of land should be put in writing. For example, a clause could be included in the purchase and sale agreement recognizing that the value of the property is substantially higher than the sale price and expressing the seller's intent to make a charitable contribution to the buyer, or a letter could be sent to the land trust prior to closing the transaction expressing the donor's intent.

As for any gift of property greater than \$5,000, the gift portion of the bargain sale, as well as the fair market value of the property, must be substantiated by a qualified appraisal (paid for by the donor) in order to receive the deduction.

II. OPTION TO PURCHASE

Sometimes a landowner is interested in selling his land to a land trust, but the organization does not have the funds to buy it immediately. He might then give or sell the land trust an option to buy the property. Under an option, the landowner and land trust contractually agree on a sale price, and the land trust is given a specified amount of time to exercise the option. However, the land trust is not obligated to purchase the land.

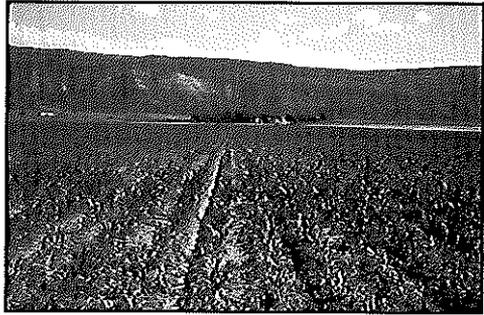


Photo by Dean Sinsat

During the option period, the land cannot be sold to any other buyer; this gives the land trust time to raise the necessary funds and enhances the land trust's ability to raise funds. People are often more interested in donating when they know that the money is going to protect a specific piece of land at a specific cost.



If you are not ready to commit to selling your land, you might consider granting a "right of first refusal" to a land trust. This gives the land trust the opportunity to match any bona fide offer you receive. As with an option, a right of first refusal does not obligate the land trust to purchase the land.

RAGLAND FAMILY STORY

"The San Miguel Conservation Foundation, and Rich Salem, its founder, offered us the opportunity to negotiate privately, act swiftly and protect our beloved property in Bear Creek from development. Our vision for Bear Creek being used as an educational, recreational and interpretive resource is being realized thanks to the efforts of the San Miguel Conservation Foundation and the Town of Telluride. Although our property was appraised at \$10 million, we elected to sell it for \$4 million. By doing this we not only received a \$6 million charitable tax deduction but also guaranteed that Bear Creek would be preserved as open space in perpetuity."

*Colleen
Ragland*



Photo by B1 E'zey



CHAPTER 4

COMBINING PRESERVATION TOOLS

For some properties, a single preservation technique may not be as effective in meeting your financial and conservation goals as a combination of land protection strategies. Sometimes a limited amount of development may also be a necessary and appropriate part of the protection scheme. Such a combination can work with careful planning where the configuration of the property allows viable building sites that preserve the natural resources, and where there are well-defined boundaries between the conservation land and the land that can be compatibly developed.

What follows is an illustration of how different preservation tools may be combined to benefit the land and the landowner. We'll use as an example a large property in an area under development pressure. The property includes prime farmland and a wooded, undeveloped stream corridor through which a path runs that traditionally has been used by the public. The landowner—a farmer—wants to pass the land along to his children, but the land has become so valuable that estate taxes may force his children to sell the property. The farmer would like to see the stream protected and could use some immediate cash.

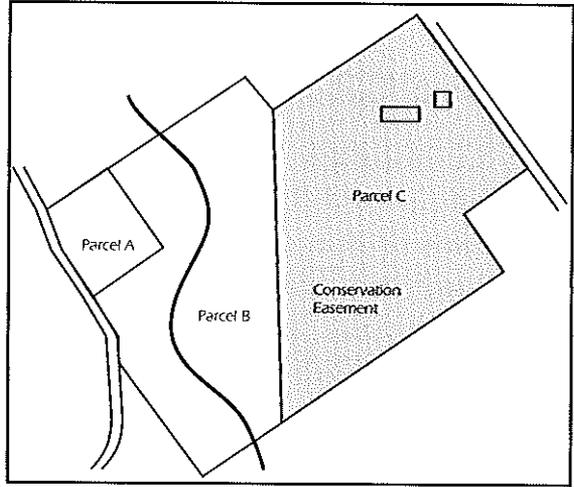
There are several ways in which he might achieve his objectives. In this example, he retains ownership of a residential area and the agricultural land, sells a portion of the property to generate cash, and protects the farmland and stream corridor by donating land and a conservation easement.

Example :

1. The landowner divides the property into Parcels A, B, and C.

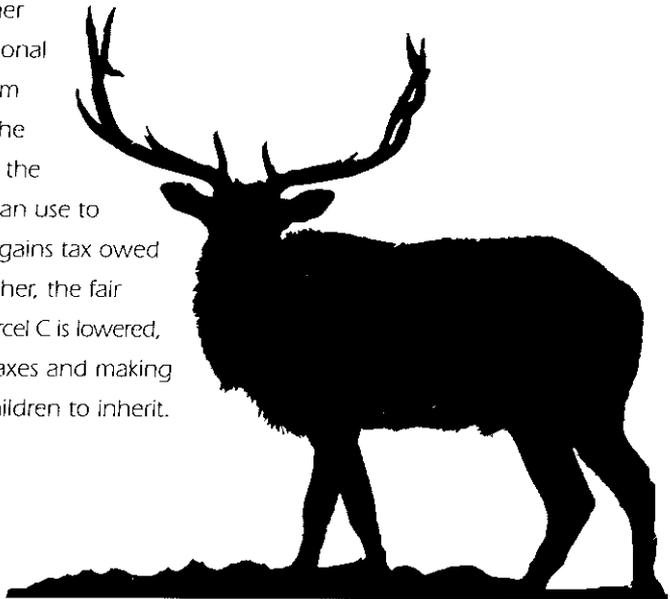
2. The landowner sells Parcel A unrestricted as a house lot for cash and pays capital gains.

3. The landowner donates Parcel B to the land trust, which is interested in preserving the stream's excellent water quality and



the public's continued use of the footpath, and the landowner receives the benefit of a charitable contribution equal to the fair market value of Parcel B, which can be used to offset the capital gains on the sale of Parcel A.

4. The landowner donates a conservation easement over Parcel C to the land trust, and continues to live and farm there. The agricultural land is preserved, and the landowner receives an additional tax deduction from the donation of the easement, which the landowner also can use to offset the capital gains tax owed on Parcel A. Further, the fair market value of Parcel C is lowered, reducing estate taxes and making it easier for his children to inherit.



THE BILL CARSTENS STORY

I am proud to be a developer, and proud of the projects our company has produced in the Telluride region during the past twelve years. I firmly believe that humans have a right to enjoy this beautiful land, along with the other creatures that inhabit it. I also firmly believe that as custodians of this land we have a positive responsibility to preserve as much of the natural attributes of this land as possible.

And I believe that we can not only preserve these attributes, we can also take dramatic steps to enhance them — by creating water amenities such as ponds and watering areas for wildlife and waterfowl, planting trees and grasses, and controlling grazing to contain noxious weeds and still preserve natural grasses and watercourses.

Furthermore it is my belief that not all land is appropriate for development — or certainly, not development to the fullest extent allowed by land use regulations. There are certain parcels that cry out to be preserved in their natural state. Yes, we could divide these parcels into beautiful homesites, and earn a generous financial reward. Yet something within tells us that there is a greater purpose for this land—that we should let it stay as it is. One such parcel is on Wilson Mesa, almost 2000 acres in size. From its heights there is a 360-degree view of the Town of Telluride, Mountain Village, and all the majestic mountains ringing the Telluride region. We call this parcel The Sound of Music — you could expect Julie Andrews and her youthful charges to come running up the hillside any minute! This is the first parcel of land I purchased in the immediate Telluride area more than twelve years ago, and

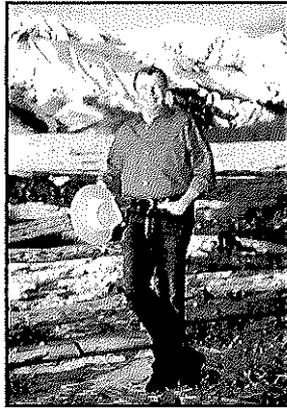


Photo by Page Teahan

and it has grown on me. It deserves to stay just as it is — except that I plan to keep enhancing it, with ponds and irrigation to create a refuge for wildlife and waterfowl.



In December of 1996 we placed a conservation easement on The Sound of Music, and granted the easement to the Rocky Mountain Elk Foundation.

Before the easement, the property could have been divided into 57 parcels under applicable State and County regulations. Now, with the easement in place, it can be divided into no more than six parcels. Yes, I gain some benefit under the Federal and State tax laws by creating this easement, but this benefit does not nearly compensate for the loss of real market value sustained by placing the easement on the property. But what is more important — we gained the satisfaction of preserving a natural treasure — and that cannot be measured in dollars.

Debbie and I plan to create additional easements in the future, on other properties. I would encourage every landowner, large or small, to consider this method of preserving the natural beauty of our Telluride area for the future generations.

Bill Carstens



CHAPTER 5

TAX CONSIDERATIONS

Federal Income Taxes

A landowner who donates a fee interest in real property or a qualifying conservation easement on real property is entitled to take a federal income tax deduction for the value of the interest in the property given to charity.

In order to qualify for this deduction, a conservation easement must meet certain criteria. The easement must be given (a) in perpetuity, (b) to a qualified organization, and (c) for a conservation purpose. Many conservation organizations, such as The Nature Conservancy and the San Miguel Conservation Foundation, as well as government agencies, meet the criteria for qualified organizations. Qualified conservation purposes include:

- preservation of land for public outdoor recreation or education;
- protection of natural habitats for fish, wildlife or plants;
- preservation of open space - including farm and forest land for scenic enjoyment or pursuant to an adopted governmental conservation policy; and
- preservation of historically important land or buildings.

The value of a conservation easement must be based on an appraisal for tax purposes. Appraisals are the responsibility of the landowner and must be acceptable to the Internal Revenue Service. Although often difficult to calculate, the value of the conservation easement is generally the difference between the value of the land unrestricted (i.e., prior to granting a conservation easement) and the value of the land after the conservation easement has been put in place. For example, if the value of a tract of land is \$50,000 without restrictions and \$20,000 after a conservation easement has been recorded on the land, the value of the conservation easement (and the amount of the deduction) is \$30,000.

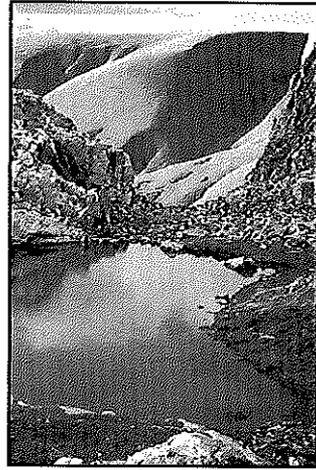
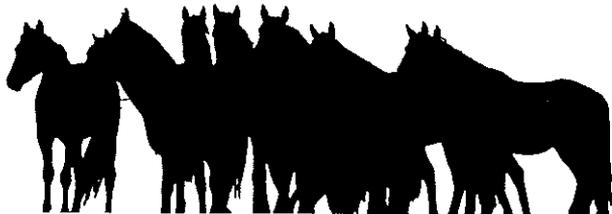


Photo by Ace Kavale

It is important to note that each parcel of land is different and the value attributed to rights relinquished on any parcel of land may vary. Reductions in real property taxes after a conservation easement is placed on land are determined by the local county assessor based on state law and local practices.

Federal Estate Taxes

The charitable donation of a fee or partial interest in real property may also reduce estate taxes due upon the death of the landowner. As illustrated in the example above, by placing restrictions on the real property (thereby reducing its value from \$50,000 to \$20,000), the landowner has reduced the value of his or her estate, which is the basis for calculating estate taxes.



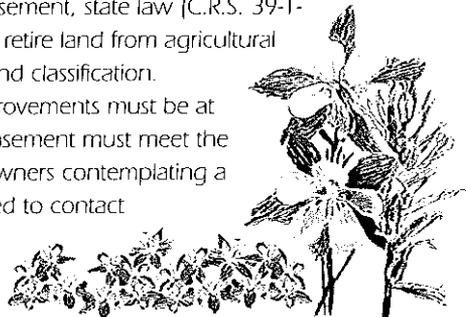
Because estate taxes can be so significant, appropriate estate planning techniques, like granting a conservation easement, are imperative to assure that the landowner's heirs can afford to keep the property. Without such planning, the heirs may be forced to sell all or a portion of the property to pay the estate taxes. A recent change in the federal estate tax laws provides that a "post mortem" decision to make a charitable donation may be made by the estate's executor or the heirs. However, for peace of mind, it is better to make the donation prior to death or provide for the donation in your will.

State Income Taxes

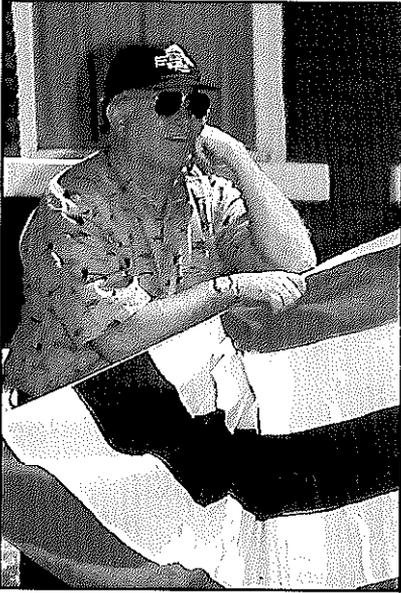
The Colorado legislature recently enacted several provisions which are more favorable to a taxpayer who makes a charitable contribution as part of a conservation easement. Colorado grants tax credits rather than deductions. The legislature increased the maximum amount of tax credit from \$100,000 to \$260,000 for conservation easements donated on or after January 1, 2003. While the amount of the credit remains equal to \$100,000 for the first \$100,000 of the donation, for any donation claimed above \$100,000, only 40% of the donation can be claimed as credit, up to the maximum of \$260,000. The practical effect of this will be that it will require a \$500,000 donation to create a \$260,000 tax credit. Any amount of the tax credit not used in the year of the donation may be carried forward and applied against Colorado income tax in the twenty succeeding income tax years. A Colorado taxpayer who has received a tax credit against Colorado income tax for the donation of a conservation easement may transfer that credit to a third party or, in certain circumstances, claim a refund from the State of Colorado for the tax credit. Finally the legislature clarified that a conservation easement is not terminated by the issuance of a tax deed.

Property Taxes

The charitable donation of a partial interest in real property may also reduce property taxes. For example, the tax assessment on an easement-restricted property should reflect the property's lower value after imposition of the easement. Currently in Colorado, if your land is classified as agricultural by the County Assessor at the time of the grant of a conservation easement, state law (C.R.S. 39-1-102(1.6)(a)(III)) allows a landowner to retire land from agricultural uses while retaining the agricultural land classification. Qualifying parcels with residential improvements must be at least 80 acres and the conservation easement must meet the qualifications described above. Landowners contemplating a conservation easement are encouraged to contact the County Assessor to discuss property tax implications.



NORMAN SCHWARZTKOPF



"As a resident of Telluride, Colorado, I have seen first-hand the intense development pressures this region faces. As more and more family farms and ranches, some in existence since the turn of the century, are gobbled up and subdivided by developers, this incredibly beautiful part of our great

Rocky Mountains is changed forever. Traditional farm and ranch lands are being lost at an alarming rate. For farmers and ranchers, this means disappearance of productive agricultural lands and communities. For the public, this means loss of scenic vistas, wildlife habitat and precious resources."

*General Norman Schwartzkopf,
Retired*

*San Miguel Conservation
Foundation Board Member*

CHAPTER 6

MUTUAL AGREEMENTS



If several landowners are concerned about protecting the open space they collectively own or a view they all share, they can establish mutual agreements or mutual covenants to protect these features. Mutual covenants can be appropriate where the protected conservation values are important to a handful of owners but not of sufficient benefit to the

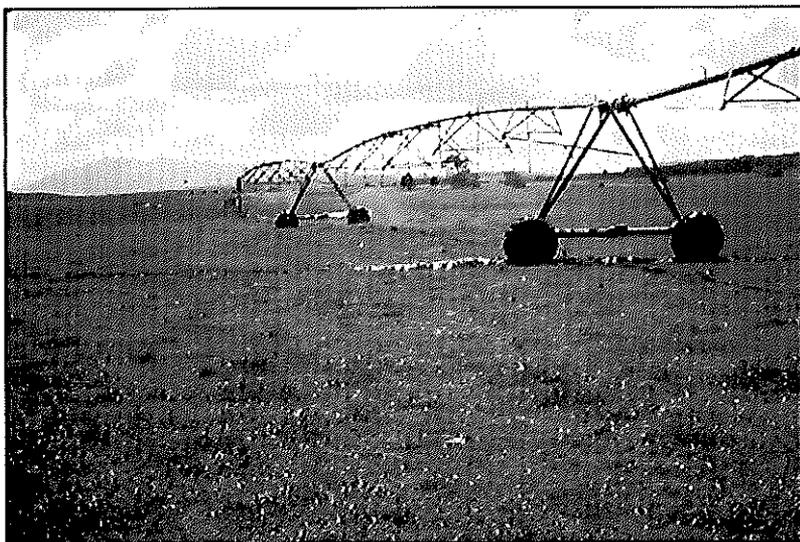


Photo by: Dean Sindt

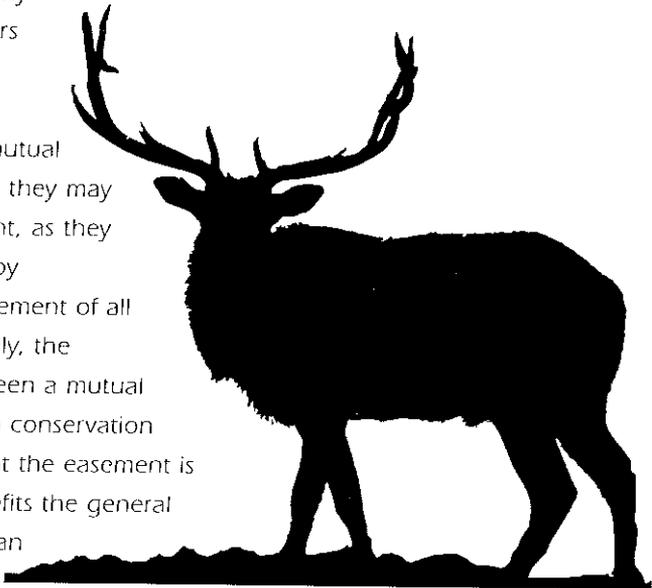


Photo by Ace Kivelle

general public to warrant a conservation easement. Mutual agreements must be recorded so that future buyers have notice.

Each landowner's recorded agreement is enforceable by each of the other landowners and their heirs and successors; however, there is no guarantee that any

of the landowners will enforce it. There are no tax deductions for mutual agreements, and they may not be permanent, as they can be nullified by subsequent agreement of all owners. Essentially, the differences between a mutual agreement and a conservation easement are that the easement is permanent, benefits the general public, includes an





enforcement mechanism and often provides tax advantages. The mutual covenant primarily benefits adjacent property owners, is not necessarily permanent, and does not provide tax advantages.



FARAWAY RANCH

Loey Ringquist chose to keep 400 acres of her Ranch free from development and placed it under a conservation agreement.

"Faraway Ranch is so unusual and beautiful that I didn't want cows and sheep being the

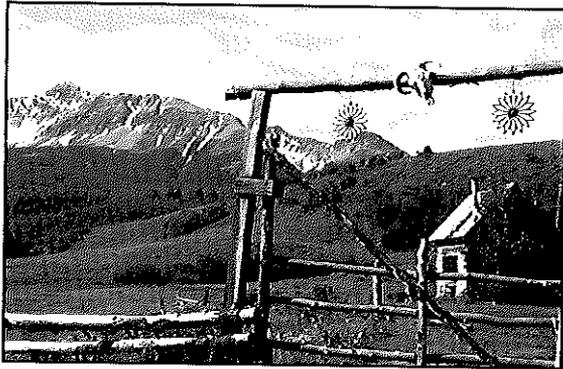
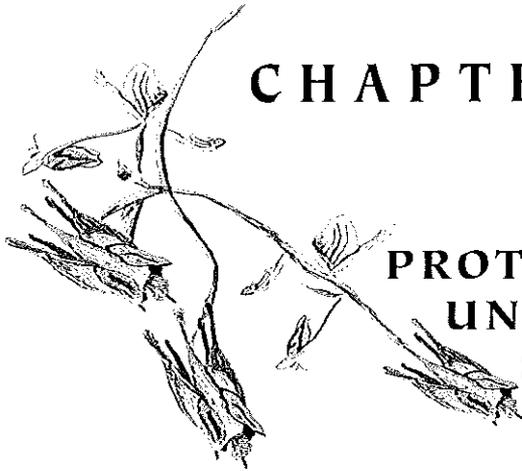


Photo by: C. Tomlinson

only ones who enjoyed it. I really wanted it for people, wildlife and special educational programs. I just couldn't bear to sell it to be developed, but I figured that the poor, the rich and the in-betweens all could have a walk-about on this special infinitesimal piece of the earth; they should also care for it as we really own no land but are only caretakers. Somehow, I was given this land to share with others and the wildlife. Caring for this land has been really simple, as I found that I was just following my bliss."

Loey Ringquist



CHAPTER 7

OPEN LAND PROTECTION UNDER THE SAN MIGUEL COUNTY LAND USE CODE

An Alternative to 35-Acre Development

The Open Land Protection ("OLP") option, which is part of the San Miguel County Land Use Code, provides an alternative to creating 35-acre parcels. A landowner with at least 70 acres can cluster houses on smaller parcels and protect the remaining acreage as open space for agriculture, ranching and/or recreation.

The purpose of OLP is to provide landowners with a way to obtain cash from the equity in their land without selling 35-acre parcels. OLP also encourages compact development so that the countryside retains its rural character, productive agricultural lands, scenic views and biological diversity.

Landowners in rural areas of the county generally are allowed to build one house and one caretaker unit for each 35 acres. For example, on 350 acres a landowner may sell or create ten 35-acre lots, each with a home and caretaker unit.

Using OLP, a landowner with 350 acres may cluster ten homes on smaller lots and receive the right to build more houses (a lot bonus) based on the amount of open space protected. For example, if the landowner dedicates 90 percent of the 350 acres to open space (315 acres), the

landowner receives a lot bonus of seven additional lots, each with one house. If the landowner dedicates 70 percent of the 350 acres to open space, the landowner receives a lot bonus of three additional lots, each with one house. These scenarios assume that each lot would be served by a well and septic system. If a central water is used, caretaker units are also allowed (as long as the total density does not exceed 2 units per 35 acres).

Why choose to use OLP?

A landowner can generate cash by selling off lots smaller than 35 acres. For example, a ranching family could sell a 2-acre parcel to finance a child's education or retire family debt.

For a landowner interested in developing, clustering can reduce infrastructure costs, and the lot bonus may offset development expenses. In addition, the value of the sale properties may be increased by their proximity to the newly protected open space.

What is the process for using OLP?

Landowners interested in applying for OLP are encouraged to discuss their ideas with the County Planning Staff. If a landowner plans to create four or fewer lots, the process is administrative and reviewed by the Planning Staff only. If more than four lots are proposed, the application





will be heard by the Board of County Commissioners at a public meeting. Planning Staff will work with landowners in designing a clustered development.

Are there any incentives to use OLP?

OLP is an expedited review process that is easier to use than the standard subdivision process. Additionally it offers a lot bonus for protecting open space. The more land that is kept open, the greater the bonus:

Protected Open Land	Lot Bonus
60%	20%
70%	30%
80%	50%
90%	70%

Who controls the open space?

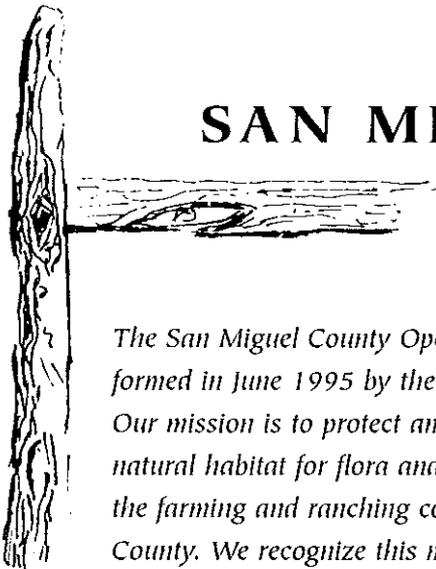
The open space parcel may be owned by private landowner(s) — including the original owner, a homeowner association, a non-profit organization or a government entity. The open space can be used for agricultural, ranching and some recreational uses.

How long is the open space protected?

The open space parcel is protected for at least 40 years, after which the owner of the open space parcel may request that the Board of County Commissioners remove the restriction. The Commissioners can remove the restriction upon a finding that the purposes of the restriction can no longer be fulfilled either due to Land Use Code and/or Master Plan amendments or a change in surrounding development patterns.

Anyone who would like more information on the OLP process is encouraged to contact the San Miguel County Planning Department at (970) 728-3083.





SAN MIGUEL COUNTY

The San Miguel County Open Space Commission (OSC) was formed in June 1995 by the Board of County Commissioners. Our mission is to protect and conserve open space for people, natural habitat for flora and fauna, and agricultural lands for the farming and ranching communities throughout San Miguel County. We recognize this mission to be very ambitious. For this reason, we are totally committed to working in a cooperative manner with stakeholders, land trusts and government agencies. Only with trust, cooperation and patience can we reach our goals.

Since its inception, the OSC has completed a number of projects in addition to this booklet. These include:

- * Amending the County Land Use Code to provide ranchers an alternative way to get cash from their land without selling 35-acre parcels — the Open Land Protection process encourages the continuation of the County's ranching heritage while creating open space and promoting compact clustered development.*
- * Working with the San Miguel Conservation Foundation and Telluride Visitor Services to issue a VISA credit card, the proceeds of which go towards land conservation projects in San Miguel County.*
- * Holding educational forums in various parts of the County on open space options and estate planning.*
- * Participating in a multi-organizational workgroup to protect the threatened Gunnison Sage Grouse in the Miramonte Reservoir area, including through the creation of a Conservation Plan.*

OPEN SPACE COMMISSION

** Working with the Out Loud lecture series to organize a public forum titled "Managing the Boundaries of a Forest"*

Ongoing projects include:

** Working with the San Miguel Conservation*

Foundation to draft and publish a countywide land conservation master plan based on a public survey and public meetings.

** Working with local governments and the U.S. Forest Service to find ways to work together.*

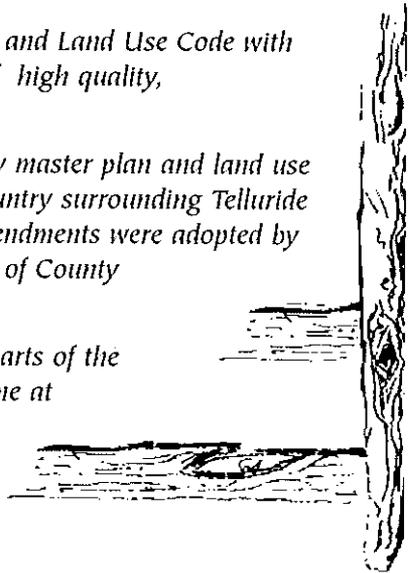
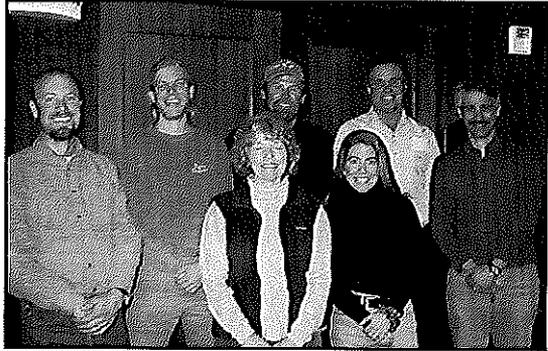
** Partnering with the San Miguel Conservation Foundation and The Nature Conservancy to purchase the development rights on a 900-acre centennial ranch.*

** Reviewing the County Master Plan and Land Use Code with the intent to facilitate preservation of high quality, accessible open space.*

** Drafting amendments to the county master plan and land use code designed to protect the high country surrounding Telluride and Ophir. These recommended amendments were adopted by the Planning Commission and Board of County Commissioners.*

The OSC meets monthly in various parts of the County. The public is always welcome at our meetings.

Joe Reagan, Chair





CHAPTER 8

WORKING WITH LAND TRUSTS

A land trust can offer valuable assistance in your effort to protect your land. The hallmark of land trusts' work is that they listen to landowner's desires and can assist them in determining the best way to keep their land preserved. The staff or board of a land trust will work closely and confidentially with landowners while they are making decisions for their land, and will be there to ensure the land is protected long after the project is completed.

What is a land trust?

A land trust is a private, nonprofit organization that protects land, usually by accepting donations of land or easements, or by buying land. Most land trusts serve a community, region, or state, although a few work nationally.

Land trust accomplishments have been impressive—there are now close to 1,000 land trusts (some of which are called conservancies, foundations, or associations) at work throughout the country. They have protected almost 3 million acres in the United States

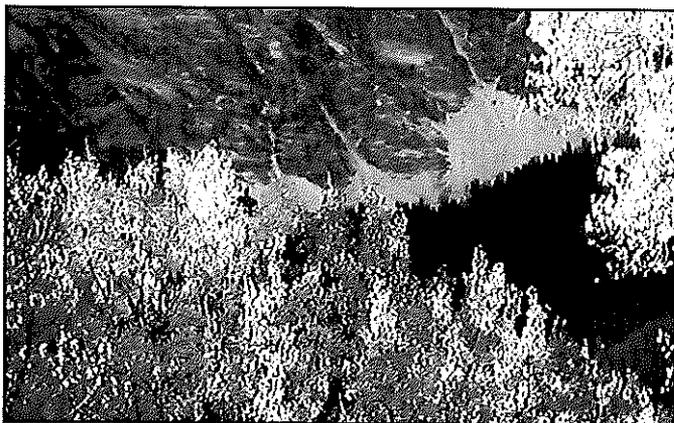


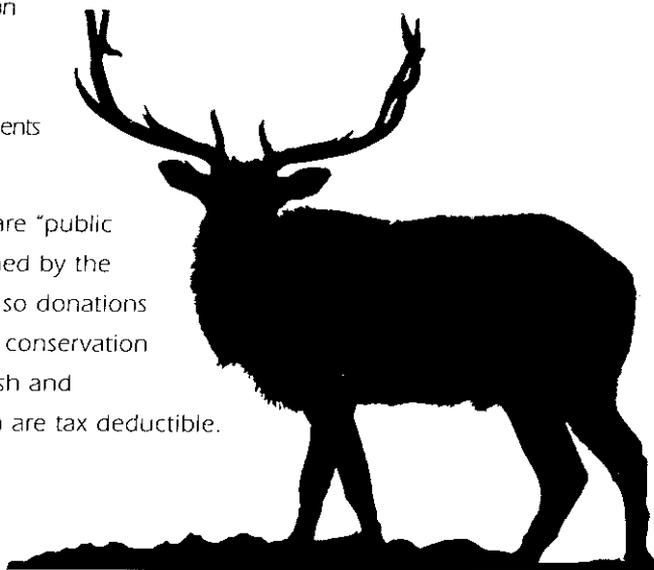
Photo by Ace Kawala

How can a land trust help you?

Land trusts can help you in a number of ways:

- They listen to your goals for your land and help match these goals with preservation opportunities.
- They often can provide referrals to attorneys, appraisers, accountants, and land planners familiar with conservation strategies.
- They generally can serve as recipients and stewards of conservation easements and lands.

Most land trusts are “public charities” as defined by the federal tax code, so donations of land, qualified conservation easements, or cash and securities to them are tax deductible.



The importance of contributing to land trusts' stewardship funds

Protecting property, especially through a charitable gift, is a major commitment for any landowner. Accepting a conservation easement or conservation property is a major commitment for the land trust as well. The land trust assumes the legal responsibility of permanently protecting the property's conservation resources, monitoring the property, and enforcing the conservation easement.

Landowners who donate land or easements are commonly asked to help ensure that the land trust can indeed protect the property forever by contributing to a permanent stewardship fund (sometimes called an endowment, or a management, monitoring, or legal enforcement fund). The fund provides the land trust with income to meet management obligations it will face as the steward of the land and/or easement. If a



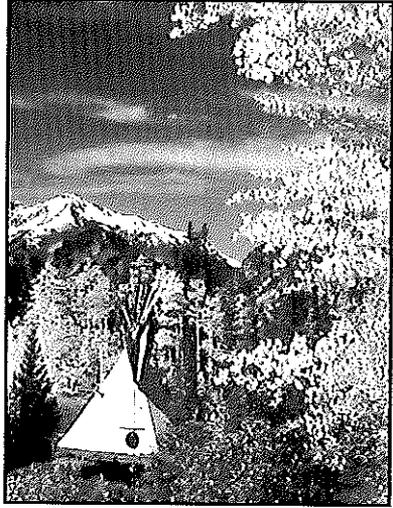
Photo By: Ace Kavale

contribution is not possible at the time of the gift, the landowner may be asked to pledge the contribution over several years, or a land trust may decide to forego the stewardship fee.

Get independent advice

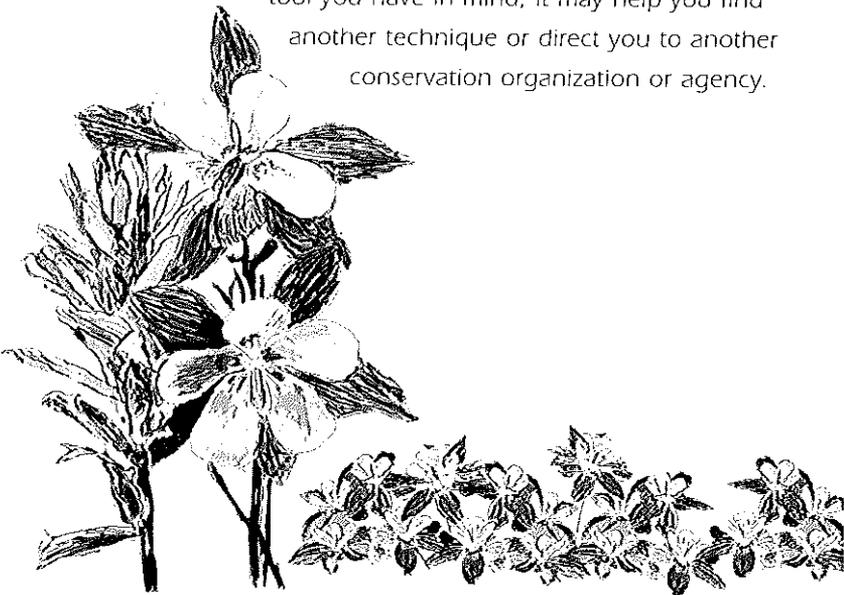
A land trust can provide an array of information and assistance, but there are a number of things it cannot do. A land trust cannot guarantee that a particular conservation plan is best

for your personal and financial circumstances. It cannot state unequivocally that a particular conservation easement will qualify for a tax deduction or say how much the deduction will be. You must get independent advice from knowledgeable attorneys and financial advisors, and of course, you must make the final decision.



Each land trust is different

While many land trusts employ all of the protection techniques described here, some work only with selected protection tools or certain types of land. If a land trust is not able to protect your land or use the protection tool you have in mind, it may help you find another technique or direct you to another conservation organization or agency.



Local land trusts in San Miguel County

I. SAN MIGUEL CONSERVATION FOUNDATION

The San Miguel Conservation Foundation (SMCF) is a private, non-profit community organization created to preserve open space in San Miguel County. As a private organization with tax-exempt status from the Internal Revenue Service, SMCF offers a wide range of professional, legal, tax, environmental and land planning expertise to landowners interested in creative and beneficial approaches to today's land use challenges. SMCF acts quickly, privately and professionally with landowners to explore the income, estate, and/or property tax benefits that result from land



preservation. SMCF often engages in cooperative efforts with the Town of Telluride, San Miguel County, other local land preservation organizations and the region's major landowners.

Succeeding where others had failed, SMCF's founder, Rich Salem, negotiated the purchase of Bear Creek on behalf of SMCF and the Town of Telluride.

The 320-acre Bear Creek Preserve was SMCF's first major acquisition. This exquisite box canyon filled with wild flowers, wildlife, and waterfalls, will be preserved in perpetuity as open space

for the benefit of the public. It is an example of what can be accomplished when the entire community joins to fulfill a common vision.

SMCF has acquired additional lands in the county to preserve as open

space and is actively seeking additional opportunities. SMCF welcomes the participation of local governmental entities and other major landowners in this noble effort.

**The Executive Director of SMCF
can be reached at (970) 728-1539 or
P. O. Box 1957, Telluride, CO 81435.**



Illustration by Matt Toomey

II. THE NATURE CONSERVANCY

The Nature Conservancy ("TNC") is an international, non-profit conservation organization and land trust, dedicated to preserving rare plants, animals and natural communities by protecting the land and water they need to survive. TNC is renowned for its

business-like,
non-confrontational
approach to
environmental
problem solving.

TNC adopted the
San Miguel River as
a priority site in
1987, and an office
was opened in
Telluride in 1990.

In early 1998, TNC

added another full-time employee to its San Miguel program to enhance its efforts here. TNC has worked in partnership with private landowners, other non-profit organizations such as the San Miguel Conservation Foundation, and government agencies to protect major stretches of the river corridor and large pieces of mesa-top uplands.

TNC negotiated its first conservation easement in the San Miguel watershed in 1972, retiring the development rights to 130 acres of land at Skyline Ranch. As of this writing, nearly 2351 acres of land in San Miguel County have been voluntarily placed under conservation easement with TNC in eight separate transactions.

TNC acquired its first San Miguel River Preserve in 1987 near Naturita in Montrose County. Two other preserves were purchased in 1989: the South Fork Preserve in the Ilium Valley, and the San Miguel Canyon Preserve near Placerville. These three preserves now total 10 miles of river corridor and nearly 1,000 acres. They are open to the public for fishing and hiking.



The acquisition of these preserves and the operations of TNC's San Miguel office have been funded almost exclusively through the generosity of over 70 Colorado corporate sponsors and more than 22,000 Coloradons, including several hundred members in San Miguel County.

TNC Program Managers can be reached at (970) 728-5291 and (970) 327-0550. TNC's San Miguel office addresses are: P.O. Box 3140, Telluride, CO 81435 and P.O. Box 1024, Norwood, CO 81423

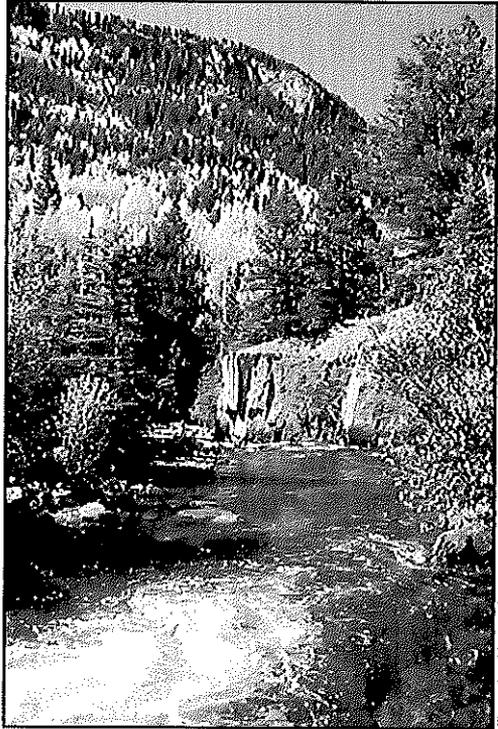


Photo by Herold E. Ivaidic

III. COLORADO CATTLEMEN'S AGRICULTURAL LAND TRUST

The Colorado Cattlemen's Agricultural Land Trust is a Colorado non-profit organization whose mission is to help Colorado's ranchers and farmers protect their agricultural lands and encourage continuing production for the benefit of themselves, their families and all of Colorado citizens. CCALT's primary emphasis is to increase awareness among landowners about the use of conservation easements as a means of protecting land and as a tool for facilitating the inter-generational transfer of productive lands. Formed in 1995, CCALT is a land trust of landowners, by landowners, and for landowners. CCALT has partnered with 47 landowners in the protection of over 116,000 acres across the state. CCALT holds two conservation easements on Wrights Mesa. **The Colorado Cattlemen's Agricultural Land Trust Program Director can be reached at (303) 431-6422 x 57, 8833 Ralston Road, Arvada, Colorado 80002.**

THE TELLURIDE OPEN

The Telluride Open Space Commission was created in 1993 after a town referendum established the "20% solution" dedicating 20% of town revenues for the preservation and protection of Open Space.

Telluride is considered a model community in the State of Colorado for having had the courage to put its money where its mouth is "to preserve the open lands that are so important and play such a critical role in defining our sense of place."

During its first year, the Commission developed The Telluride Open Lands Plan which outlines the community's values relative to Open Space and establishes a framework for land protection activities by the Town of Telluride. The plan incorporated a Natural Areas Study which assisted the Commission in rating and prioritizing specific properties in the area for protection.



SPACE COMMISSION

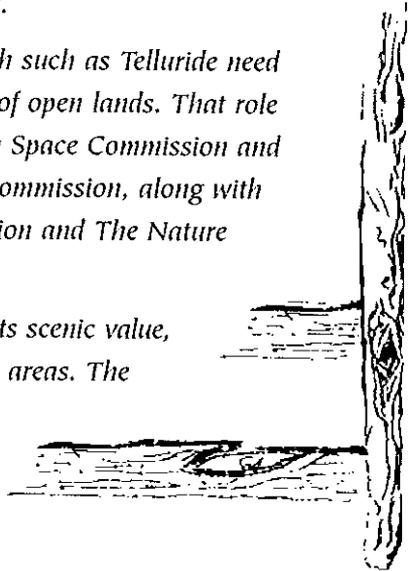
Working with the San Miguel Conservation Foundation, the Commission's first major project involved the commitment of nearly \$2 million towards the purchase of the 320 acre Bear Creek Preserve and creation of the Bear Creek Charter in 1995. The Bear Creek negotiations and ultimate purchase was a classic example of how Open Space protection can be accomplished in a cooperative spirit. We are very lucky to have developed this public-private partnership. The Foundation acquired additional acreage in the Bear Creek Preserve in 1997 (the Gerdts parcel) and in 2001 (Little Canton Millsite).

The Commission places the Valley Floor west of town and south of the highway spur as it's highest priority for open space protection and river/wetland restoration. Also high on the list is the scenic view corridors and the hillsides above Telluride. The Commission endorses the San Miguel County Open Space Commission's proposed High Country Zone District.

Communities facing accelerated growth such as Telluride need strong advocates for the preservation of open lands. That role is played locally by the Telluride Open Space Commission and the San Miguel County Open Space Commission, along with the San Miguel Conservation Foundation and The Nature Conservancy.

We're here to protect Open Space for its scenic value, wildlife habitat, wetlands, and riparian areas. The biodiversity of this high alpine ecosystem is what makes it such a special place.

Roberta Peterson, Chair





CHAPTER 9

RESOURCES

Publications from the Land Trust Alliance

The Land Trust Alliance (LTA) publishes many useful books and journals concerning conservation easements and other conservation issues. Most of the Land Trust Alliance's publications are primarily written for land trust staff, attorneys, and appraisers, but landowners and their advisors will also find them highly useful.

Available from LTA, 1319 F Street NW, Suite 501, Washington, DC 20004-1106; 202-638-4725.

The Conservation Easement Handbook—The best publication available on all aspects of conservation easements. Includes IRS criteria for tax-deductible easement gifts, tax benefits, a model conservation easement, and guidelines for land trusts establishing or running easement programs. By Janet Diehl and Thomas Barrett (San Francisco, CA 1988)

The Federal Tax Law of Conservation Easements—Authoritative legal volume interprets the IRS regulations on gifts of conservation easements and discusses related income and estate tax considerations.

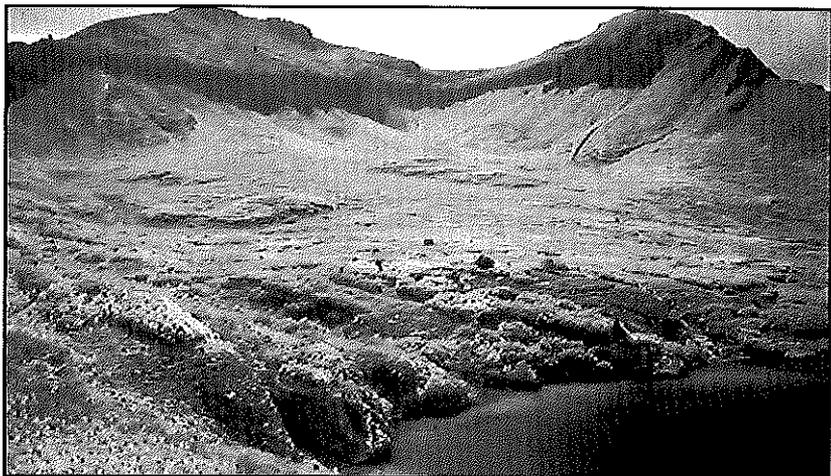


Photo by: Ace Kavalle

Statement of Land Trust Standards and Practices—Booklet listing the standards and practices a land trust should follow in order to operate responsibly and ethically.

Appraising Easements: Guidelines for Valuation of Historic Preservation and Land Conservation Easements—Primarily for appraisers, this authoritative guidebook describes what should be contained in an easement appraisal report and general principles of easement valuation.

Other Publications

Charitable Giving—A Tax Guide for Individual Donors, a booklet explaining the same subject in layman's terms. (Available from Arthur Anderson, 69 W. Washington Street, Room 2952, Chicago, IL 60602.)

Preserving Family Lands— by Stephen Small (Boston, MA: Landowner Planning Center, 1992) is a landowner's guide to the federal estate tax, including examples of how wise estate planning, through the use of conservation easements and other methods of land preservation, can save family lands from forced sale to pay estate taxes. A copy of this book can be obtained from Landowner Planning Center, P.O. Box 4508, Boston, MA 02101-4508 (617-357-1644)

Preserving Family Lands Book II— by Stephen Small (Boston, MA, Landowner Planning Center, 1997) Landowner Planning Center, P.O. Box 4508, Boston, MA 02101-4508 (617-357-1644)

The Back Forty— published ten times a year by the Land Conservation Law Institute (a program of Hastings College of the Law and the Land Trust Alliance), is a newsletter devoted to land conservation law. Contact the Hastings College of the Law, 200 McAllister St., San Francisco, CA 94102 (415-565-4857).

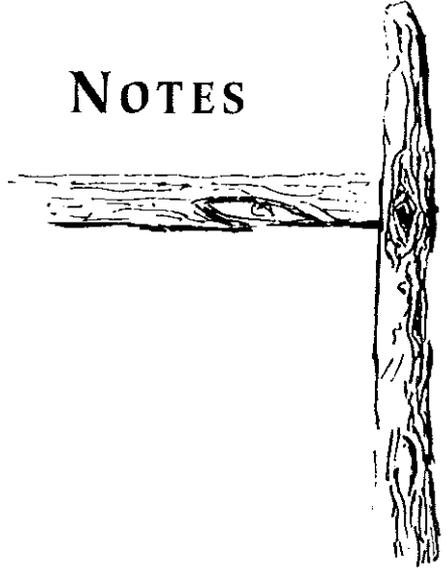
Common Ground—published six times a year by the Conservation Fund, has many articles of interest about land preservation and conservation easements. Contact the Conservation Fund, 1800 North Kent, Suite 1120, Arlington, VA 22209 (703-525-6300) for subscriptions or information.

Directory of Private and Public Land Conservation

Organizations in Colorado —gives a brief overview of each active land trust in Colorado and a contact at each public agency involved in land protection. The Directory is available from Colorado Open Lands, 555 DTC Parkway, C2050, Englewood, CO 80111 (303-694-4994).



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