



What is SB22-208 all about?

Condemned Conservation Easement Property Compensation

**Protecting landowners and conserved lands
in the face of eminent domain and condemnation.**

**SB22-208 ensures just and fair compensation
for the property and conservation values lost.**

A recent district court case held that when condemning land with a conservation easement on it, the condemning authority only must pay the encumbered value, not the unencumbered value/fair market value, for the land. The effect is little to no value for the conservation easement being held in the public's interest that is lost upon condemnation. This puts a target on conserved lands, the very lands that have been protected from development, by making them cheaper to condemn than unprotected lands.

Solution

State statute is currently silent on this issue. SB22-208 clarifies that if land with a conservation easement on it is condemned, the unencumbered value of the land is paid to the fee owner and the easement holder to ensure all property rights are recognized and compensated for.

Why This Matters

If we don't solve this problem, it will have catastrophic impacts on both private landowners and existing conservation efforts in the state.

Harms landowners and conservation easement holders:

- This will have sweeping effects on current conservation easements and landowners who up until now believed they did everything they could to protect their property by giving up certain rights. They will be losing the value of what they protected, the public loses the value of what the land trust holds in their interest (the conservation easement) and neither party will be fairly compensated for it.

Harms future conservation:

- This ruling sends the message that lands protected with a conservation easement will be less expensive to condemn for development. This will result in protected landscapes being targeted for condemnation for various development because the land will be seen as cheaper. It delegitimizes the conservation easement tool because it creates a clear path for



valuing property specifically protected against development at far less than property that is not protected at all.

- Land trusts who hold the conservation easements are required to re-invest any condemnation proceeds they receive back into future perpetual conservation to offset the loss of conservation values from the condemnation. By only paying for the encumbered value, the land trust's portion of the proceeds is so little, they cannot effectively replace the conservation values lost by protecting another parcel or landscape. In the case of public investment in the original easement, where the landowner received GOCO funding or tax credits for their donated easement, that public investment is also lost when the property is valued at the encumbered rate because the easement value is ignored. This, in turn, damages the public's trust in CEs and investing in conservation, generally.
- The condemning authority often receives the entirety of the property in fee, unencumbered. By this current ruling, they are only paying for a portion of the property rights they are acquiring and specifically not paying for the property rights that are held for the public good – those protected by the conservation easement.

Finally, this will absolutely make landowners think twice about a conservation easement. 60% of lands in Colorado are privately owned, these landowners and conservation easements are necessary to reach our climate goals and protect our agriculture and outdoor economy. Rulings and policy like this will set us back in our ability to do solid work with people who would benefit the most.

For questions or more information please contact:

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