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Land Locked

Controversial Conservation Easements Last Forever

By Charles E. Gilliland

The expanding economy and the rising popularity of rural land as a recreational asset is changing landscapes across the state as landowners accommodate eager buyers. Even in remote areas, large land holdings are being broken up, transforming pastoral vistas into patchworks of housing developments and ranchettes. Landowners, environmentalists and wildlife officials alike are viewing changes in land uses as a threat to wildlife and the rural way of life. Many view ownership fragmentation as an unfortunate trend eroding the character of the Texas countryside.

To reduce fragmentation, environmentalists have urged landowners to consider voluntarily creating land-use restrictions known as *conservation easements*. These easements generally prohibit any activity deemed to be at odds with preserving the current land use, most frequently some form of ranching. The easement is granted to a trustee who assumes a legal obligation to ensure that landowners comply with the restrictions in the easement.

In essence, the easement transfers control of a portion of the owner's rights to the trustee. In addition, the trustee asks the landowner to donate funds to cover the cost of managing the easement. Owners can continue operating the ranch as long as their activities do not stray beyond uses allowed by the easement.

Conservation easements thwart development pressures that drive the fragmentation process. Ranch owners who hope to preserve their ranches for future generations often find the idea of banning development appealing. When ranch ownership passes to younger generations, the heirs often feel pressured to convert land-based

wealth to cash by breaking up the property into smaller parcels. Some landowners see conservation easements as a means to ensure that the family ranch does not end up as a golf course or ranchette development.

Proponents contend that conservation easements let current owners "lock up" their land and provide financial benefits as well. Critics deride them as tax breaks for the rich that threaten to lock land into inferior uses and deprive future generations of freedom to control properties and living arrangements.

In most cases, landowners who surrender some of their property rights by creating a conservation easement are compensated through income tax savings. By pledging a permanent conservation easement that is binding for all future landowners, owners are eligible for a deduction equal to the difference between the ranch's value before severing the rights and its value after imposing the easement. Ideally, that difference should reflect the value of the rights surrendered through the easement.

Properties with unique qualities may be sought after by groups wishing to purchase conservation easements. Owners of such properties can bargain for compensation to cover the rights sur-



CONSERVATION EASEMENTS reduce breakup of family farms and ranches by preserving the current land use. Opponents argue they deprive generations to come of the freedom to control their properties.

rendered. Because all terms of the easement are negotiable, owners may attempt to obtain specific desired terms from the group purchasing the easement. Purchased easements can even be temporary if the owner foregoes the income tax benefit.

Although conservation easements have become more prevalent in rural Texas, many landowners regard them with skepticism. Several issues cause owners concern. First, for a tax deduction to offer significant benefits, owners must have sizeable taxable incomes. Many long-time Texas ranch owners have limited income and few assets other than their land. For them, a tax deduction has little or no value. Further, establishing a management fund may require more cash than they can afford. Without an organization offering to purchase the easement, these owners have little incentive to grant one.

Second, many owners suspect that the trustee's role in managing the easement may intrude on their use of the land. The trustee must see that activities on the land do not transgress the limits imposed by the easement. In practice, the trustee may be able to veto plans to construct new buildings, clear land and conduct a variety of other activities. Many landowners see this as an unacceptable intrusion on their authority.

As time passes and personnel of the trustee organization change, differences could emerge regarding what constitutes acceptable management practices. Unless otherwise specified in the easement agreement, the trustee could transfer the easement to another group without the landowner's approval. Faced with

this loss of control, some owners are reluctant to grant easements.

Finally, the benefits received for granting the easement depend on the estimated value lost to the easement. Many tax professionals routinely look for a 50 percent reduction in value from the appraisal. However, some appraisers contend that value effects often amount to much less than half of the property value, especially if there was little prospect of immediate development. Further, before-and-after appraisals are difficult when appraisers are faced with complicated loss-of-control issues with little empirical evidence to establish the value effects. In some cases, ensuring that no development will occur enhances market acceptability, leaving owners who were expecting large value losses disappointed when an appraisal indicates a much lower reduction in value.

Conservation easements remain controversial among landowners. Many hesitate to lock up land forever, depriving future generations of control over how their land is used. Landowners considering imposing an easement would do well to consider all sides of the issue carefully. If an easement accomplishes the end they desire and affords sufficient benefits, and if the legal document establishing the easement clearly describes restrictions, it can serve as a helpful management tool. ♦

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