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Congress uneasy over easements

Abuses cited in use of tool to reduce taxes while preserving land

By Joanne Kelley, Rocky Mountain News
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Conservation easements, which offer landowners tax breaks for giving up development rights on their properties, are among the charitable deductions facing scrutiny in Congress.

The tax-planning technique has grown increasingly popular in Colorado, where dozens of land trust groups and government agencies handle donations for property owners. But while the easements can protect open space, ranches and farms from future development, lawmakers say it's an area that's become ripe for abuse.



Aspen Valley Land Trust ©

Mike and Kit Strang, horse ranchers in the Roaring Fork Valley, donated a conservation easement on their 450-acre spread with a magnificent view of Mount Sopris. Development has gobbled up much of the valley floor.

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Some developers have managed to qualify golf courses for conservation easements, while others have donated the development rights on their backyards. Concern over whether property owners inflate the value of their donations also has been raised.

"There's really got to be a demonstration of public benefit and not just individual and private benefit," said Will Shafroth, executive director of the Colorado Conservation Trust and chairman of the Land Trust Alliance, an umbrella organization representing local groups.

In Colorado, 915,000 acres are covered by conservation easements, according to a survey just completed by the Colorado Conservation Trust, a Boulder-based nonprofit focused on preserving open lands.

The easements have helped to preserve some of the sweeping views that drew people to Colorado in the first place. In the Roaring Fork Valley, where development pressures have intensified with skyrocketing land values, Mike and Kit Strang donated conservation easements on much of their 450-acre horse ranch near Carbondale.

"It's 100 percent visible from a public road and has big vistas," said Martha Cochran, executive director of the Aspen Valley Land Trust, the state's oldest such group.

The Strang Ranch is among the remaining working ranches in a valley that has increasingly succumbed to subdivisions.

"It's one of the main productive, prosperous ranches," said Cochran, whose group managed the deal. "You can't just have one left."

Colorado alone has 42 land trusts, many of which report that the trend toward conservation easements has grown rapidly since the state began offering donors tax credits, which can be sold to raise cash.

That has proved a boon to land-rich but cash-strapped ranchers who want to stay on their land but wouldn't benefit much from taking an income tax deduction when they donate an easement.

Donors usually get about 80 percent of the value of the deduction if they sell their tax credit to a third party, according to Mike Strugar, director of the Conservation Resource Center in Boulder.

"They're so popular, the envelope is being pushed," Strugar said of conservation easements. "They were pretty much uncontroversial and sort of everyone's darling. Clearly there's been a sea change."

Questions over how the Nature Conservancy handled land deals has helped draw attention to the practice.

The U.S. Senate Finance Committee now is mulling legislation that would tighten rules governing the easements. The changes are likely to be included in a broader package of reforms aimed at the nonprofit sector later this year.

At a hearing last week, the panel heard from the Internal Revenue Service, which said it is examining hundreds of easement donations for possible abuses.

So far, proponents of conservation easements say Senate Finance Committee members appear to be considering appraisal standards and stricter enforcement, measures that could help the sector more than hurt it.

In January, a report from Congress' Joint Committee on Taxation proposed doing away with the tax deduction for those who live on the property they are putting into an easement. The vast majority of easements are donated by landowners who live on the land. The panel also recommended slashing the tax deduction.

"The proposals would have been devastating to land conservation in Colorado," said Kris Larson, executive director of the Colorado Coalition of Land Trusts. "We were pleased to see those drastic proposals were not on the table last week. But until we see how it plays out, there's always cause for concern."

Land trust officials say easements have been a boon to local economies and tourism.

"We have a lot of open spaces instead of hillsides of condos," said Crested Butte Land Trust President Sandy Leinsdorf, whose family has a ranch in Gunnison County. "We feel it contributes to people coming here and spending money."

A land trust on the Western Slope was created in 1980 by fruit growers worried about all the growth associated with the shale boom. Since then, about 85 different deals have protected roughly 43,000 acres, most of which is rangeland. Some farmers have used the conservation easements as a way to get equity out of their property to invest in more land or equipment.

"We've seen some really interesting uses," said Rob Bleiberg, executive director of Mesa Land Trust in Palisade. "They're helping to keep the economic viability of the orchard community and fruit lands. Peaches and wine really help define this place."

Still, Bleiberg said stricter controls could have a positive impact.

"There is a potential today for people to abuse the system," Bleiberg said. "If we make that hard it only benefits the folks doing good work."

Conservation easements

Because of their tax benefits, conservation easements have become an increasingly popular legal tool for property owners.

By donating a conservation easement, landowners get a tax deduction in return for giving up future development rights on their open land, ranch or farm.

A conservation easement allows owners to continue to own and live on land and to sell it or pass it on to heirs.

- At issue: While the easements have helped preserve 915,000 acres in the state, legislators are looking into abuses of the practice, such as property owners inflating the value of their donations.

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