

Reinventing Conservation Easements

In recent decades conservation easements—promises to restrict land development—have become enormously popular, but now they are in trouble. News reports have created concern that some easements are little more than tax avoidance schemes with no public benefit. In response, the IRS has stepped up audits, and some members of Congress want to curtail deductions for easements, or even eliminate them altogether.

Neither approach is desirable. Tax laws governing easements are so vague that the IRS seldom prevails against abusive appraisals. The meat-axe approach, meanwhile, would eliminate many beneficial easements yet fail to address serious, long-term problems. Fortunately, there are better answers. A set of simple reforms would ensure public accountability in easement creation, appraisal, and enforcement.

Few anticipated today's problems when Congress enacted tax benefits for easements in 1980. Then conservation easements were relatively rare. But today there are more than 1,500 local and regional land trusts holding almost 18,000 easements—double the number of five years ago—covering over five million acres. And that doesn't count thousands of easements held by federal, state, and local governments and by national organizations such as The Nature Conservancy and the American Farmland Trust. The public investment in direct expenditures and in tax deductions is difficult to estimate, but clearly substantial.

Despite this, most states have no standards governing the content of conservation easements. Nobody even knows where all the easements are, let alone their price in lost tax revenue and enforcement costs. Virtually no state ensures that land trusts have the capacity to manage the easements they hold. Few land trusts have the funds to enforce or defend just one easement in court, and challenges are certain to mount as land passes to new owners, economic incentives to develop property grow, and land subject to easements is subdivided.

Almost no states have measures to protect the public interest when land trusts—many created in the last two decades—dissolve, as some inevitably will, or when landown-



Gregory K. Ingram

ers attempt to terminate or amend existing easements. A recent survey by the Land Trust Alliance, a voluntary standard-setting organization, found that an overwhelming majority of land trust representatives fear that the easements they hold may not withstand the test of time.

The remedy must begin with transparency. Every state should have a comprehensive public registry of easements, and opportunity for public comment on how proposed

easements fit overall developmental policies and priorities. Individual appraisals should be public and subject to closer scrutiny. It also would help to standardize easement terms. Their great variability complicates efforts to value them and to determine whether they merit their public subsidy. States should spell out procedures enforcing easements when land trusts fail, and for ensuring a public voice when landowners or easement holders seek to terminate or amend easements. That's only fair. Conservation easements are financed with public money to achieve a public interest in the long-term preservation of open space. Failure to protect this defeats the very purpose of using public resources to create them in the first place.

These changes may not be politically popular. Some will object to increasing the role of government, and others will protest that transparency may discourage landowners from donating easements. Fortunately, these fears already have been put to an empirical test. Massachusetts has led the nation with a system of mandatory public review and approval of conservation easements at both the state and local levels for nearly four decades. Far from stifling the easement movement, government supervision has strengthened it. In fact, the Bay State has more conservation easements than almost any other state. With easements under close scrutiny in the media and losing support in Congress, this approach offers a model for reform. **L**

For more background and analysis on this topic, see the recently published Lincoln Institute report, *Reinventing Conservation Easements: A Critical Examination and Ideas for Reform*, by Jeff Pidot (<http://www.lincolnst.edu/pubs/>).