Land Letter
THE NATURAL RESOURCES WEEKLY REPORT

Printable version: Thursday, October 26, 2006

4. CONSERVATION: New tax law spurs interest, activity in easement transactions

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A recently passed law that provides generous tax deductions to landowners who enter into permanent conservation easements on their properties is already spurring new transactions involving thousands of acres of forest, ranch and farmlands. However, because the deduction carries an end-of-2007 sunset date, private land trusts across the country are scrambling to complete easement transactions and to inform potential users of the program about its availability.

The tax provision, passed as a section of the H.R. 4 pension reform law this past August, allows qualifying property owners to offset up to 100 percent of their adjusted gross income through donations of conservation easements. In addition, the new rules let the taxpayer deduct 50 percent of the value of a conservation easement donation in any year, while raising the carry-forward period for using the deduction from 5 years to 15 years.

As before, the tax laws let landowners grant partial easements that still allow specified uses, such as farming or timber harvesting, while precluding other development activities, as specified in their agreements. In cases where easements are acquired by private trusts, the valuation for tax purposes rests on fair market appraisals of full versus partial uses of the property in question.

"This was a good move by Congress for people who are land rich but cash poor," said Laurie Wayburn, president of the Pacific Forest Trust in San Francisco.

The law may also spur greater use of conservation easements in Western states, Wayburn said. The use of conservation easements has been more common in Eastern states since their initial use for the Blue Ridge Parkway in the early 1930s. There is also a heavy concentration of protected lands in New England, she said, notably as part of the Trustees of Reservations in Massachusetts, which was founded in 1891 to manage regional properties. The nonprofit group owns and manages 25,000 acres of land on 96 reserved properties, plus it holds perpetual conservation easements for an additional 14,000 acres.

"H.R. 4 was specifically designed to engage Western landowners, because we have large farms and ranches," Wayburn told *Land Letter*. "This is a way for families to protect their properties into the future." In the past decade, reductions to tax rates for capital gains and estate taxes has lessened the relative value of using conservation easements, but the new law helps to restore the benefits, she said.

Russ Shay, director of public policy for the Land Trust Alliance, agreed that people with high incomes probably will not see as great a benefit from the full deduction because they already have ways to shelter income from taxation through investments. But he said, "a lot of people whose incomes are relatively modest will be able to deduct more of the value of what they donate, particularly agricultural landowners, whose incomes are not great but whose land is extremely valuable."

Representing about 1,500 private trusts across the nation, LTA says there are currently about 9 million acres under trust management. Each trust has to be accredited and is responsible for keeping track of its managed easements, but there is no single national database of transactions. LTA is completing a survey of its members to get a more accurate accounting of such holdings. Shay said survey results may be ready for release after the November elections.

Conservation in the pipeline

Across the West, private land trusts are reporting new interest in use of conservation easements as a result of the law change. "We've had a tremendous increase in inquiries," said Glenn Pauley, executive director of the Wyoming Stockowners Agricultural Land Trust. "Our calls are up 300 percent."

The law applied the new deduction scheme to easement donations made during 2006 and 2007, even though it was not signed into law until September.

The Wyoming trust currently has 32,000 acres of easements in its portfolio, and Pauley said there are another 30,000 acres in various stages that he expects to complete within the allowed period. Most were begun in anticipation of passage of the bill but will be able to take advantage of the tax breaks. "We expect a lot more activity later next spring," Pauley said.

Similarly, trusts in Colorado and Montana say they are working through their current stack of easement transactions, while preparing for an influx of new work as a result of the bill. "We've got a bunch of pending deals," said Chris West, director of conservation for the Colorado Cattlemen's Agricultural Land Trust. "This will certainly increase the benefits and tilt the economics" to push more landowners into deciding to employ easements, he said.

"We've had people waiting for this legislation to be passed," reported Jay Erickson, managing director of the Montana Land Reliance. Since the law went into effect at least three families who had been thinking about using the program called. "One is completely ready to go and two others are interested," he said. The Montana Land Reliance holds easements for nearly 650,000 acres currently but expects to add well over 100,000 acres in the next 12 months, he said.

While Erickson did not want to divulge specifics until the transactions are completed, some of these deals will involve properties of more than 30,000 acres each.

According to LTA's Russ Shay, the average conservation easement donation is approximately 200 acres, although in recent years there have been some very large donations, such as a 700,000-acre agreement in Maine.

In California, the new tax provisions had a direct role in advancing a pending acquisition of easements for 800 acres of land at the headwaters of the Feather River, Wayburn said. The property is one of the largest remaining alpine wetlands in the West and is located in an area under tremendous development pressure. "Conservation easements are a great tool for sprawl control," she said.

Increased workloads seen

All this expected activity means bigger workloads for trusts and their staff to complete easements during the period allowed by H.R. 4. Completing a conservation easement can take anywhere from a few months to a couple of years, most trust representatives agreed, and it is a big decision for the landowners to make, involving a lot of education and assistance.

"This is only good through 2007 and that really doesn't give us time to get ready to handle the potential volume," said Pauley of the Wyoming group. "We're very much encouraging people to participate," he added. "We're holding courses for real-estate professionals, lawyers and accountants" to educate them about the new tax benefits, he said.

The Montana Land Reliance is also bracing for an influx of easement activity. "That's the kind of problem we like to have," Erickson said.

The Land Trust Alliance and its members also expect to return to Congress to try to win an extension or permanent status for the new rules. The Joint Committee on Taxation is reluctant to offer long-term extensions for many perceived tax subsidies, which often leads to sporadic activity and uncertainties. The committee estimated that the conservation easement deduction will cost the Treasury $79 million over the two-year period. "I hope they are underestimating it," said LTA's Shay.

"It takes a lot of time to do it right," Shay added. "The realities of doing a good conservation easement involve complicated decisions that irrevocably affect lands forever. For many people that land is their most valued asset. It's disruptive to only have two years."