



State disputes \$15 million of tax credits

Probe could take shine off program that saves lands

By Jerd Smith

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Colorado ranks No. 2 in the nation in its use of conservation easements, protecting more than 1.2 million acres.

The state is now protecting land faster than it's being developed, according to the Colorado Conservation Trust. About 170,000 acres of private lands were protected in each of the past two years, while 90,000 acres were developed, the trust reported.

Success and abuse

Fourteen other states have similar programs, but Colorado has one of the most generous tax credits - 50 percent of the value of the easement up to \$375,000, according to the IRS.

Colorado also is one of just three states that allow the sale or transfer of tax credits, the IRS says.

The lucrative, flexible nature of the credits has made them wildly popular and helped build Colorado's star status in the conservation world.

But it also has made the program expensive for the state and an easy vehicle for unscrupulous business people.

"Colorado's benefit is very attractive," said Ron Schultz, senior technical adviser to the IRS team investigating conservation easements here and nationwide.

"It's significant in amount, and it is also transferrable to others. That's very unusual - to allow a transfer to folks who aren't involved in the easement."

The ability to transfer tax credits is what gives the program its muscle, conservation advocates say.

How it works

For example, a rancher sells an easement to a nonprofit land trust or a city or county for less than its value. This reduces the cost to the land trust or government agency, which agrees to maintain the easement and make sure its use is consistent with its conservation purpose.

Because the rancher didn't take full payment for the land, the difference is considered a charitable donation that qualifies for a tax credit. When the deal is complete, the rancher can sell the credit, usually for about 80 cents on the dollar, if his income isn't large enough to make use of the full tax credit.

The practice has allowed vast swaths of land to be placed under conservation easements at 40 percent to 60 percent of their open market price, before they could be developed. The goal is to save scenic lands that might have succumbed to fast-paced growth.

Great Outdoors Colorado, which uses lottery proceeds to protect endangered lands, has spent nearly \$73 million to help purchase conservation easements since 2000, the year the innovative tax credits took effect.

County open space programs and nonprofit land trusts have spent millions more.

Was it worth it? In some instances, no.

As the program has grown more appealing, the motivation for fraud and abuse also has grown.

Fear of the future

The controversy is deeply disturbing to Colorado's fierce conservation advocates, who've fought hard to create land trusts and open space programs across the state. These are the entities that hold the easements and ensure their terms are enforced forever, that the land isn't later developed or misused.

Has the state moved too fast? Conservation experts say no.

Boulder County operates one of the largest open space programs in the state, protecting about 90,000 acres - 55,000 through outright purchases and 35,000 using easements.

Ron Stewart, the county's director of open space, said it's critical that the tax credits continue to be used.

"Given the development pressure this state faces, the kind of place we're going to be will be affected greatly by the amount of land that gets preserved," Stewart said.

Most worrisome to conservation groups is that landowners will walk away from the program because they fear tax audits or prosecution.

The Conservation Trust estimates more than 1 million acres of scenic landscapes still lack protection.

Jill Ozarski, executive director of the Colorado Coalition of Land Trusts, said it's important that Colorado maintain its momentum in protecting land.

"We're hoping these investigations will have a chilling effect on those trying to abuse the process. People who are doing legitimate easements should not be afraid. The important thing is to move forward."

History of the tax credit in Colorado

1999:

Colorado lawmakers pass law creating conservation easement tax credit program; allows landowners to sell tax credits to others.

2000: Law takes effect.

2002: Colorado lawmakers amend law to increase amount of money claimed.

2003: Colorado Department of Revenue begins auditing returns, initially a few at a time.

2004:

Internal Revenue Service issues a "Yellow Light Notice" warning that those who claim tax credits for conservation easement deals will

be subject to intense scrutiny.

2005: IRS begins massive round of audits on tax credits linked to conservation easements in Colorado and nationwide. **2006:** Colorado's senators, Ken Salazar and Wayne Allard, warn IRS to back off scrutiny; IRS ups the ante, suggesting it may allow credits for easements only for lands designated as habitat for endangered species; IRS eventually backs down.

2007:

Colorado legislature tightens rules governing use of conservation easements, including new requirements for appraisals setting the dollar value of the easements. That value helps determine purchase price and value of tax credits. * Colorado Division of Real Estate and Division of Securities begins investigation into use of inflated appraisals and possible fraud by land trusts and private companies seeking to protect land to generate tax credits that can be sold.

Top 10 groups holding easements

Rankings based on acres held:

Acres funded Name Acres by GOCO*

1. Colorado Cattlemens Agricultural Land Trust 199,643 93,817
2. Colorado Open Lands 148,373 23,651
3. Colorado Division of Wildlife 124,916 11,950
4. Rocky Mountain Elk Foundation 107,531 10,059
5. The Nature Conservancy 102,981 32,991
6. Palmer Land Trust 52,223 4,167
7. Yampa Valley Land Trust 36,051 13,329
8. Black Canyon Regional Land Trust 33,488 155
9. Mesa Land Trust 31,430 5,025
10. Greenlands Reserve 26,408 0

Why use conservation easement tax credits to protect land?

They can be used to protect land without having to purchase it outright, and that means nonprofit land trusts and open space programs don't have to spend as much to shelter endangered lands. It also means they have fewer responsibilities for managing the land than if they owned it directly.

An easement protects the land's scenic qualities forever, while allowing the original owner, such as a rancher, to continue ranching.

Colorado has taken the practice a step further by offering tax credits that the landowner can sell. This is important especially for cash-poor ranchers, who can sell the credits, adding to the incentive to protect land instead of selling it to developers for more cash.