

Considerations for Conservation Easements (CE)

Development is not the problem, as rural economic pressures come from:

Government Restrictions, Regulations and Treaties;
Weather Fluctuations;
Market Fluctuations;
Operators Being Price Takers without Control of the Market Pricing Structure
(or the ability to pass on increased business costs, such as fuel expenses);
Subsidized Foreign Market Dumping Without Protection;
Influx of Wealthy Urbanites Competing for Control;
Estate Taxes and Compliance Costs;
Tax Exempt Non Government Organization Environmental Lawsuits.

QUESTIONS:

- What are CE (Purchased Development Rights – PDR) impacts to private landowners and communities?
- Do the perceived “benefits” offset the impacts? (CE doesn’t make a better farmer)
 - Lost economic activity and lost tax revenues
- What are the unintended consequences and the implications from imposing a CE (PDR) on Private Land?
 - Non-trust third party litigation (against Grantor)
 - Federal Nexus and Section 7 Consultation
- What is the long range outcome from imposing a CE (PDR) on landowners?
 - According to whom? (Tax Exempt Organization?)
- Would a limited liability company, incorporation, a family trust or historical culture designation better serve the landowner’s tax needs and communities instead of a CE (PDR) that brings in third party issues and potential Federal management?

Options for Legislative Consideration

- License and Regulate Land Trust Agents
 - Regulation by State Real Estate Commission
 - Bonding Requirement on Each CE Transaction Equivalent to value of encumbered property before transaction
- Renegotiation language built into CE contract that allows grantor to renegotiate every 10 years
 - If renegotiations cannot be accomplished to satisfaction of landowner, the CE contract becomes null and void;
- No CE shall be valid and enforceable unless the limitations or obligations created by the easement are clearly presented in writing on the face of any document creating the CE including information from the Uniform Conservation Easement Act (UCEA) 1981
- **Full Disclosure** requirements and Public Notification of adjacent Landowner(s) during CE transactions.
- Grantor retains rights of transfer on all rights not expressly identified CE.
- Local and state legislation expressly prohibiting transfer of CE to other parties without formal written consent of landowner
- Land Trust liable for taxable value of severed Development Right to county to prevent erosion of tax base as community infrastructure demands increase
 - This includes any IRS back taxes if CE (PDR) is revoked
- Elimination of third-party enforcement clause language from CE contracts (Colorado Statute)