



Land conservation tax incentives should inspire charitable giving, not loopholes

BY ANDREW J. BOWMAN AND STEPHEN S. WAGNER, OPINION CONTRIBUTOR — 02/19/19 05:00 PM EST [12](#)
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Our nation's tax code encourages charitable giving. It does so reasonably and rationally by allowing taxpayers to deduct the value of what they are donating from their taxable income.

But a handful of “bad actors” — so described by the U.S. Department of the Treasury — have in recent years broken this system. By artificially inflating the value of certain land conservation deals, these bad actors developed a tax scheme the IRS says has resulted in more than \$20 billion in unwarranted charitable tax deductions since 2010. This scheme is wrong and must be stopped.

This is why we strongly support the newly reintroduced, bipartisan Charitable Conservation Easement Program Integrity Act sponsored by Republican Sen. [Steve Daines](#) of Montana and Democratic Sen. [Debbie Stabenow](#) of Michigan. This bill, S. 170, would prevent people from profiting off of conservation easement transactions designed to generate unwarranted tax deductions, while ensuring the vast majority of conservation easement donations can continue as truly charitable endeavors. Because just like other charitable donations, conservation easement donations are not intended to generate a profit.

Before we go any further, we want to make one thing abundantly clear: The voluntary land conservation our nation has accomplished through conservation easements is both laudable and valuable. Among the more than 56 million acres that have been privately conserved across the United States, there are countless examples of farmers, ranchers and other honest, hardworking Americans who have chosen to conserve their land for the benefit of their fellow citizens. These charitable contributions protect our lands, our wildlife, our waters and our ways of life. This system is largely working as Congress intended when it created a tax incentive in 1976 to help facilitate land conservation.

We need now only to ensure the system's integrity. The Charitable Conservation Easement Program Integrity Act achieves this goal by:

- stopping bad actors from financially profiting
- allowing honest conservation donations to move ahead
- safeguarding taxpayers
- preserving the good reputation of our nation's land appraisers
- providing Congress a concise and sensible solution

Decisive action is needed because promoters of these abusive transactions have not been deterred by the IRS, which two years ago categorized these conservation easement tax shelters as "tax avoidance transactions" that it would challenge. Even though promoters of and participants in these transactions must report their activities to the IRS or face fines, the problem persists.

In December, the U.S. Department of Justice filed a civil complaint against promoters of an allegedly abusive conservation easement syndication tax scheme. According to the complaint, the 96 transactions at issue resulted in over \$2 billion in claimed federal tax deductions.

It's time to close the loophole. The Charitable Conservation Easement Program Integrity Act would prevent abuse of charitable donations while keeping important incentives in place. It would allow landowners of modest means to conserve their lands for the benefit of all Americans. The proposed legislation will not stand in the way of reasonable deals or partnerships created to advance conservation, but it will end the abuse. And we're working together — with Congress — in the best tradition of sensible bipartisan cooperation to get it done.

Ultimately, land conservation incentives should inspire charitable giving, not wrongful profiteering.

Andrew J. Bowman is president of the Land Trust Alliance.

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The Post and Courier

Use accredited land trusts for conservation easements

By David Ray

Mar 1, 2019

Since the 1970s, hundreds of thousands of acres of farm, forest and natural land across the country have been permanently protected through conservation easements. Lowcountry Land Trust alone has protected more than 143,000 acres forever, thanks to landowners committed to maintaining the legacy of their land. Special places throughout the Lowcountry will remain as we see them today because of the foresight and dedication of the property owners.

But, as Chloe Johnson reported Feb. 22 in The Post and Courier, the continued protection of critical habitats could be under threat by tax shelter activities being challenged by the federal government as fraudulent.

Conservation easements are voluntary agreements in which a landowner agrees to promote conservation by limiting (or eliminating) uses, such as development rights and segmentation. One of the most critical steps in the process is the appraisal showing the impact of the conservation easement on the property value. Due to the limitations outlined in the conservation easement, the current landowner's reduction in property value can be claimed as a charitable donation to a land trust and may be eligible for federal and state tax benefits. Although the property is kept in private ownership, the conservation easement on the land is legally held by a qualified organization, like Lowcountry Land Trust, responsible for annual monitoring in perpetuity.

Unfortunately, a few bad actors have set out to exploit and ultimately threaten the integrity of this critical land protection tool. Syndicated conservation easements often involve a complicated partnership structure by which each partner may claim tax deductions greatly in excess of their initial investment. Further, they may inflate property values and the size of the "charitable contribution" to claim larger tax deductions. The practice stands to cast a shadow on tax incentives important to the work of the nation's accredited land trusts.

Conservation easements are not, and never were, intended to be tax shelters. They keep working land working, and protect the integrity of critical habitats, while providing reasonable compensation to landowners for their contribution to conservation. Land trusts do not offer legal, appraisal or tax advice, but it is our duty to encourage landowners to use reputable attorneys, appraisers and tax consultants with a proven track record of reputable conservation work.

As a Land Trust Alliance accredited land trust and member of the S.C. Land Trust Network, Lowcountry Land Trust does not and will not hold syndicated conservation easements. We fully support all efforts to strengthen legislation that prevents the abuse of this critical tool. We encourage landowners to seek reputable, accredited land trusts and to be cautious of arrangements that seem too good to be true. The conservation work we do is too important to be compromised by those who would abuse tax incentives in a way that undermines our mission.

David Ray is chief conservation officer for Lowcountry Land Trust.

Trust Our Land: Washington lawmakers move to strengthen conservation easements (column)

By Bergen Tjossem

January 17, 2018

Land trusts across the country are working hard to preserve the lands that make America beautiful and ecologically viable. For decades, landowners have been able to receive enhanced tax benefits in exchange for permanently limiting development on their land while retaining full ownership and management by entering into a voluntary conservation easement agreement.

Landowners can exercise this private property right by signing a contract (the conservation easement) with an accredited land trust (such as the Eagle Valley Land Trust) or a government agency. Land conserved via a conservation easement is land protected forever. Conservation easements are the only land conservation tool whereby landowners can leave a permanent legacy of conservation in exchange for fair compensation.

The clear majority of Republican and Democratic lawmakers in the House and Senate continue to support land conservation in the United States. Congress is currently working to pass a law that further protects these agreements, thereby further protecting the public benefit that these permanently conserved lands provide.

LAND IS VALUABLE

Land is valuable. The vast majority of conservation easement transactions are legitimate, properly valued and handled by land trusts that are nationally accredited with the Land Trust Alliance to uphold the highest ethical standards. However, a handful of overzealous real estate investment promoters have threatened to jeopardize the conservation easement tool by creating and attracting investors to clearly fraudulent “conservation” schemes and hoping they will go unnoticed.

The Land Trust Alliance outlines these schemes as follows: “Unrelated investors fund land acquisition through various pass-through entities, such as partnerships or limited liability companies. After a short holding period, usually fewer than three years, the entities donate conservation easements ... and claim deductions based on appraised values that are significantly in excess (often by three to 10 times) of the original acquisition price. As a result, investors receive exaggerated tax benefits that are worth significantly more than the investors’ initial investment. Typically, promoters organize these transactions in return for high fees.”

These fraudulent deals promise extraordinary tax shelters for a comparatively low investment. In response, Congress has proposed the Charitable Conservation Easement Program Integrity Act, which enhances the veracity and durability of conservation easements by closing this loophole in the tax code. If passed, then Congress will ensure that this vital and useful conservation tool will remain in place.

Eagle Valley Land Trust is accredited by the national Land Trust Alliance and upholds the highest ethical standards alongside all accredited land trusts nationwide. As an accredited land trust, Eagle Valley Land Trust cannot (and will not) participate in fraudulent transactions.

The integrity of conservation easement donations and tax benefits is essential to the work of all legitimate land trusts. Some have threatened this integrity, which threatens to undermine the entire land-conservation process. By taking action, Congress will further protect these vital agreements.

This act will allow the benefits available to landowners to continue, rewarding honest philanthropy while closing the door on further abusive profiteering of this charitable incentive for conservation. For more information, visit <http://www.lta.org>.

Bergen Tjossem is the communications and fundraising coordinator of Eagle Valley Land Trust. He can be reached at bergen@evlt.org. For more about the Eagle Valley Land Trust and how it is conserving land and benefiting the community, visit <http://www.evlt.org>.