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CONSERVATION EASEMENTS: The Attack on Farmers & Ranchers No One is Talking About

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1. Land under a conservation easement is no longer private property.

The primary problem with conservation easements is that they willingly convey control of the property to a third party, rendering the fundamental right of "private property" void. Control of the land is the essential element of a property right, but when a landowner signs a conservation easement, they give this away.

2. Conservation easements are more accurately defined as conservation "servitudes."

What the environmental community has labeled as a conservation easement (CE), more accurately meets the definition of a "conservation servitude." CE's create a "negative servitude" on the land by preventing the landowner from taking action on his property. In contrast, an "affirmative easement" allows the landowner to make active decisions and use of the land.

For example, when a road easement (an affirmative easement) is conveyed across a property, the easement holder is guaranteed access, yet this limited right does not allow the holder to dictate what use the landowner will make of his property. Control of the property remains with the landowner.

That is not the case with a conservation easement, aka, "servitude." In this case, the primary control of the land is to ensure the conservation purpose is met and not harmed by any other actions on the land. The landowner's rights become sub-servient to the conservation purpose. However, using the term "servitude" instead of "easement," would dissuade many landowners from considering the agreement. It is not surprising that the environmental community chose the more palatable, yet less accurate, terminology

3. Does the conservation value become the primary purpose of the land?

Yes – Once the easement is in place, the conservation purpose for the land becomes the dominate right that determines all other uses, in perpetuity. This is determined by the land trust or governmental entity, not the landowner.

4. Can the landowner change the use of the land in the future?

No – When the CE agreement is created, a "baseline assessment" of current productive uses, such as livestock grazing, farming, existing improvements, hunting and recreational uses, is created and included as a part of the contract. Typically, these uses are authorized to continue at existing levels. For example, if you need to repair an existing fence, you can do so, but you will likely be prevented from adding a new fence without express permission from the holder of the easement.

The exception to this is if the contract plainly allows for this change. However, this must be done in such a way as to not infringe on the conservation purpose now or in the future, which will not be decided by the landowner, but by the holder of the easement.

5. If the CE allows agricultural uses, will these uses continue in the future?

Many landowners believe that the agricultural use of the land will continue as agreed upon when conveying the easement. However, this is an assumption destined to fail.

The freezing of existing uses is problematic because nature, advancements in technology and science, and society's preferences are continually changing, and all activities that rely on nature must change with it in order to retain the best qualities of the land. But, because of the restrictive easement terms, landowners no longer have the ability to make reasonable changes in their operations as required. This places the landowner in a position of continuing activities that, over time, are very likely going to harm the land, contrary to the conservation purposes, and detrimental to the landowner's business.

However, the conservation easement holder, i.e., land trust or government agency, retains maximum flexibility to modify activities to fulfill the conservation purpose, such as protecting endangered species habitat. When the landowner's activities and priorities collide with the conservation purpose, it is the conservation purpose that prevails. When a conservation easement is placed on land in perpetuity, it is the conservation purpose that must be carried out. The agricultural activity may continue.

6. Does the conservation easement protect the land from development, forever?

No – Land with a conservation easement can be condemned for a public purpose, as can any other parcel, such as for new power lines connecting wind farms, or carbon sequestration pipelines.

The idea of placing a conservation easement on your land to protect it from development seems noble, until you realize the only activities restricted or prevented are those of the landowner. The easement holder gains a substantial asset that is recorded on the entities balance sheet. They also gain primary control of the land. Meanwhile, the landowner and future heirs are forever committed to live under the restrictions and oversight of the easement holder.

7. Can a land trust sell the conservation easement to a governmental entity?

Yes – The easement can be sold to another land trust or governmental entity. Unfortunately, the conservation easement has become an easy way to convey property sought by governmental entities because it allows the government to avoid public scrutiny generated when seizing private property through regulations, zoning or condemnation

An article published by the National Center for Public Policy (NCPP) in 2008, found that twothirds of The Nature Conservancy's budget was spent on purchasing conservation easements from landowners and then reselling these to government entities. The Nature Conservancy (TNC) is arguably the largest land trust in the world. In one example they site, TNC resold an easement purchased for $1.2 million directly to the Bureau of Land Management for $1.4 million.

An additional concern is that many land trusts receive federal funds for the acquisition of conservation easements. In the same article mentioned above, the NCPP found that TNC was receiving $100 million annually for its conservation easement program. The conservation easement program is big business.

In areas where private landowners are being approached by government entities to purchase their land, and later approached by land trusts offering to protect them and their property from future development, seller beware. It may seem like the preferable option, however, there are no guarantees that the property won't eventually be in the government's control, as originally planned.

8. Can the landowner dissolve the conservation easement if the IRS denies the tax-deduction?

No – Many landowners encumber their property with the conservation easement for the purpose of reducing their income tax liability, or to reduce the estate tax liability to their heirs upon their death. To receive the tax-deduction, the IRS requires the conservation easement to be: 1) in place; 2) held by a land trust or government entity; 3) for conservation purposes; and 4) in perpetuity. If the IRS finds these requirements have not been met, the deduction is denied. However, the conservation easement is a binding contract that continues. **It is forever.**

9. Does a conservation easement devalue the land?

Yes – In most cases the easement reduces the taxable value of the land, causing property taxes to go up for surrounding landowners, and the revenue to states and counties for public services to go down. Nebraska Department of Revenue found that the Federal Wetlands Reserve Easement devalued the land by 40%.

10. What benefit does the inheriting generation receive?

None, except for the restrictions. The landowner who signed the agreement can take either an income-tax deduction, or estate-tax deduction on the property. Once this has been exercised, the inheriting generation receives no additional financial benefit, however, they will still be bound to the restrictive terms of the easement, in perpetuity.

11. Should conservation easements have a sunset clause?

Yes – Eliminating the "in-perpetuity" provision at the state and federal level would allow the next generation to decide if they want to continue with the conservation servitude on the land. There is a concept in property law that the "dead hand" should not control land beyond the grave, that the earth belongs to the living. A term no longer than 15 years would allow the landowner to re-evaluate the relationship and either withdraw or continue with the encumbrance.

12. Would eliminating easements "in perpetuity" better protect individual liberties?

Absolutely – Taking this concept further, we must ask the moral question of whether we have the right to restrict the individual liberties of future generations. We know that property rights are essential to our ability to limit the powers of government that threaten individual liberty. A conservation easement diminishes the control we have over our property and limits our protections we have against government tyranny, not just for today's generation, but for generations to come.

13. Are conservation easements being used to accomplish the 30×30 agenda and monetization of natural assets?

Definitely – Conservation easements in perpetuity are part of the lands that make up the Department of Interior's 12 percent figure they reported as being "permanently protected," and therefore meeting the 30×30 requirement. Numerous environmental documents and Biden Administration policy statements identify conservation easements as a primary tool to move private lands under the control of the 30×30 program. The recent proposed rule by the Securities and Exchange Commission to create "Natural Asset Companies," would allow land trusts or the government to enroll the easements into the private investment product with or without the landowners' consent. Additionally, the Biden Administration is looking to add the "ecosystem services" value of lands it controls to the federal balance sheet under "Natural Capital Accounts." The federally owned conservation easements would be valued as a federal asset for these purposes.

Proponents of 30×30 identified early on that they must convince landowners to "voluntarily" enroll their lands into conservation easements in perpetuity to make progress towards 30×30. Sixty percent of America's lands are still privately owned today. These are some of the most productive lands in the nation that environmental elitists, profiteers and the administrative state want to control.

The motivations of landowners to place conservation easements on their land are often well intended. They want to protect the land from future development, ensure the agriculture use continues, and receive a financial benefit. However, the conservation easement cannot guarantee that any of these intentions will be met, and in the case of agriculture, it works against this interest by preventing management flexibility.

Additionally, "in perpetuity" becomes the most important consideration of a landowner when placing a conservation easement on their land. Their heirs or future owners of the land may not want to continue the "conservation purposes" of the easement and desire to change the use of the land to coincide with technological advancements, environmental changes, or a number of factors undeterminable at the time the conservation easement is implemented, but they will never have that option.