

State's ballooning of open tax credits scrutinized

BY KIM MARQUIS
special to the daily
Summit County, CO Colorado
January 15, 2007



SUMMIT COUNTY — A state system used to preserve open space in Summit County might be headed for reform as charges of tax code abuse sully its reputation.

Conservation easements, which allow private property owners to protect their land from future development while reaping tax breaks, are being investigated in Colorado to the tune of 250 audits by the Internal Revenue Service.

A Joint Budget Committee report citing the IRS audits released last month found that “very few” cases had a realistic valuation of the easement. Some land was valued as if it were about to be developed for housing, “when no such potential exists,” the report said.

With state finances constrained as they are, the lack of oversight of the program means a number of taxpayers are further exacerbating the problem by skirting taxes based on their over-valued easements.

People who head up local efforts to secure open space through conservation easements say that while the system does need more oversight, reported abuses are likely overblown.



Copyrighted photo
Conservation easement between Highway 9 and the Gore Range north of Silverthorne near Mt. Powell Ranch
Summit Daily/Mark Fox

“Ninety-eight to ninety-nine percent of all these conservation easement transactions are legitimate and facilitated by legitimate organizations,” said Todd Robertson, director of the county’s open space department. “There are a few bad apples in the bunch, but it’s not a case where the whole bushel is bad.”

Nearly 14,000 acres have been preserved in Summit County through about two dozen conservation easements managed by the county’s efforts and local land trusts. Statewide, these private voluntary agreements protect nearly one million acres.

Land trusts are charged with determining that easements have conservation value. Leigh Girvin, executive director for Breckenridge-based Continental Divide Land Trust, said the determination is based on many factors but includes scenic views, wetlands and agriculture production.

“Specific to Summit County, what we get is large tracts of wildlife habitat that are protected from development,” she said.

Since the system is largely self-policed, the potential for abuse exists. People hear about the tax breaks and want to take advantage of them.

Girvin cited an example where a land owner sought a conservation easement on a tiny patch of wetlands left after the property had been developed.

Robertson recalled a land owner with 40 acres in the Lower Blue who wanted a conservation easement but planned two home sites. Property in that area is zoned one unit per 20 acres. “So it’s like, ‘Where’s the conservation value?’” Robertson asked.

In the above examples, Girvin and Robertson said land owners were simply told “no.” In these cases there is no abusive intent, Girvin said, but property owners simply need to be educated.

Still, people can shop around to find a land trust that will help them put a conservation easement together. To weed out bad apples, the national organization Land Trust Alliance is working on a set of guidelines for a voluntary accreditation program. Everyone interviewed for this story intends to participate.

But LTA’s accreditation guidelines might not satisfy state lawmakers.

In 2005, \$85 million in tax credits were issued under the program in Colorado. Five years before, the total was only \$2.3 million. The growing cost of the program is criticized by legislators who say the money could support many programs in a state struggling under a budget crisis.

The JBC's report also criticized Colorado's program for not being able to identify where preserved lands are located. In essence, the state doesn't know what it got for the money.

Proponents say that issue could be easily rectified by requiring a reporting system and creating a database.

Amid the scrutiny, good news recently arrived when the IRS backed off its definition of the kinds of property that qualify for tax incentives. While it had said only habitat for endangered or threatened species qualified, a Michigan lawsuit found the IRS's interpretation too narrow.

Conservation easements work by appraising a land's value under two scenarios:

developed and not developed. The owner then keeps the land and donates a conservation easement to a land trust, thereby earning a tax credit on a portion of the difference in the two appraisals. The credit is 50 cents on the dollar up to a \$750,000 cap. The owner may also get a write-off on his or her federal tax return.

Howard Hallman, a Silverthorne resident who is president of Greelands Reserve Land Trust, supports more government oversight. The organization aims to protect a 140-mile stretch of the lower Arkansas River Valley, from Pueblo east to the state line. So far it holds about 180 easements that preserve 31,500 acres.

"The guidelines and how conservation easements should be valued dollar-wise are not as clear as they should be," Hallman said, adding that tax credits for easements in Colorado are relatively new. He predicted a "healthy" process of adjustment.

Land owners with conservation easements can sell their tax credit to someone with a larger tax burden. The going rate is currently about 85 cents on the dollar. For example, a \$50,000 tax credit is bought by a wealthy person for \$42,500, who thereby saves \$7,500 in taxes.

Money earned by selling tax credits can help a family that might be land rich but cash-poor put their kids through college or shore up a retirement fund, but the secondary market is helping fuel the state's lost revenues.

“Ninety-eight to ninety-nine percent of all these conservation easement transactions are legitimate and facilitated by legitimate organizations. There are a few bad apples in the bunch, but it’s not a case where the whole bushel is bad.”

–Todd Robertson, Director of the County’s Open space Department

U.S. Sen. Wayne Allard, R, met with IRS officials last month in an effort to support Colorado's program, saying he didn't want a few people who have abused the system to end the tax credit for everyone. A new law that went into effect Jan. 1 increases state tax credits available within the system.

Girvin said the tax incentives are an important tool in preserving land around the state.

"The reason we're seeing such high rates of conservation in Colorado is because of this incentive," she said. "People aren't going to give their development rights away for nothing."

Land trusts are not supposed to negotiate deals by advertising tax breaks. In fact, no one interviewed for this story could say how much money their clients had earned. But the figure is far less than the value of the preserved land, Girvin noted.

North of Silverthorne, conservation easements were used in conjunction with open space purchases and existing public lands to protect a wide corridor that stretches from the Eagle's Nest Wilderness Area to the Williams Fork Range.

"Imagine what development would do to the wildlife habitat and the view corridor," she said. "It's what you don't see ... but we as a public still benefit."