



Ridin' Shotgun

Picking the bones.
By Jeff Goodson

Seems like every time you say “environmental easement” these days, somebody gets a nosebleed. The words clearly conjure up different pictures to different folks. Land trusts see land saved from developers. So do environmentalists, and further erosion of the private property rights that they hate so much. Landowners who voluntarily sell easements typically see windfall profits, and lower property and estate taxes. Local governments are conflicted; some like the green space on the one hand, but all of them hate the loss of tax revenue on the other. So do neighboring landowners, who have to pick up the tab for the lost revenue. Other landowners gnash their teeth at the loss of their family property rights to the death tax, and see environmental easements as nothing but a way for land trusts to pick the bones of the family estate.

Everybody has an opinion; some people have more than one.

For the willing landowner, there are two main benefits of environmental easements: “keeping property undeveloped, and money.” For those who want to keep their land from being developed, easements are the method of choice. Lawyers in Texas used to call this “dead hand control,” since the landowner controls the use of the property even from the grave. Property use and development restrictions are usually described as lasting “in perpetuity” on the land deed. How long “forever” is, though “or should be” remains the subject of hot legal and legislative debate.

Donating an easement is especially popular among rich liberals, who can afford it, and who relish the notion that they can screw homebuilders at the same time that they lower their property taxes and keep the riff-raff from building next door. But the overriding consideration for most landowners is money.

When a landowner sells his property-use and development rights to a trust, very large

profits are often generated by the sale. And, because the easement reduces the “highest and best use” of the property at appraisal, property value drops dramatically and so do the annual property taxes levied by local authorities. This can be a big deal, especially in states like Texas where property taxes are among the highest in the nation. Moreover, since the value of the property is lower with an easement, so is the death tax.

People naturally resent the hell out of having to sell the family ranch to developers, or their land-use and development rights to an environmental land trust, just to pay death taxes. To add insult to injury, with an easement the family has someone spying on how they use the property. Forever. After all, it's not really “their” property anymore. It's co-owned by somebody else, and the new co-owner—the land trust, or the government, or other enforcer that the land trust sold it to—will be

dropping in from time to time to make sure you're not doing anything wrong.

No one knows how many environmental easements exist only because of the death tax. Land trusts naturally don't advertise those statistics. But the number is considerable, and many landowners with a tax gun to their head

see death taxes, land trusts and environmental easements as all part of the same problem.

Environmental easements are an increasingly hot topic for America's ranchers. The dramatic increase in property values over the last 20 years, coupled with the exponential spread of our cities and towns as people seek more quality space in which to raise families, means that the number of ranches exposed to the problem has exploded. Virtually every rancher with buildable land on the rural-urban frontier is affected, as well as ranchers who own land anywhere with development potential.

At the end of the day, the fundamental problem is the death tax itself. Most ranchers are land rich and cash poor, and when land suddenly gets appraised at death for its development value, there's just no way that most families can pay the tax. The result is resentment, big time—not just at the tax that causes the problem, but at the land trusts which feed off of it.

When it comes to environmental easements, what you see depends on where you stand. ■

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