MANSION GLOBAL

How to Keep Your Kids From Destroying the Ancestral Estate—and Get a Tax Break in the Process

Easements offer financial upside in several ways as well as a way to conserve the land

By Michael Kaminer

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When their assets include large pieces of land, families in the U.S. can face stark choices. One faction may want to preserve the land; another may want to break it up for a financial windfall.

But more landowners are learning they can have it both ways. With a legal instrument called an easement—which essentially relinquishes some property rights in exchange for tax benefits—property owners let conservation-minded nonprofits manage their land and receive tax savings for those concessions.

“A conservation easement is one of the most effective and flexible tax-planning actions you can take, and it’s one of the only partial-interest gifts a property owner can make that’s tax-deductible,” said Laurie Wayburn, president and co-founder of San Francisco-based Pacific Forest Trust, which focuses on “economic incentives that reward private forest owners for conserving their lands,” according to its mission statement.

“If you own a Picasso, and you say the public can view it for free once a week, that’s a partial-interest gift that’s not tax-deductible. But if you give partial interest in your land through a conservation easement, it is,” Wayburn said.

Record wildfires have also spurred landowners to consider easements, she said.

"Many more people are thinking about fires, and fire resilience has been a major performance goal for easements," said Wayburn, whose organization typically works with easements of 1,000 acres or more. Easements can include terms for prescribed burns—when experts set controlled fires to remove hazardous vegetation and other risks. "Fires are helpful when they're done right. That can be part of our land management," Wayburn said.

Property owners also look to easements for land preservation, said Darren Clark, director of land conservation for San Antonio-based Texas Agricultural Land Trust, a land-stewardship organization that mostly works with farmers and ranchers in the Lone Star State.

"I can write a list as long as your arm about why landowners look at conservation easements. For some, the thought of seeing their generational legacy property developed into something other than agriculture or open-space wildlife is not something they want," he said. "Landowners also tell us their kids have no interest in the family property and worry the children will divide and sell when the older generation passes. Of course, some landowners are also motivated to seek out easements for financial or tax benefits."

Susan Hart, whose family has owned 3,500 acres of timber property near California's Mount Shasta for generations, reached out to the Pacific Forest Trust after discussions around the land's future became acrimonious.

"We knew we needed to manage the property and protect it in perpetuity, because it's sacred to our family," she said. "One thing the Pacific Forest Trust does so well is bridge-building. With generational properties like ours, they help find common interests and form a working plan."

The Hart family "absolutely" had tax benefits in mind as well, she said.

"We have an endangered salmon species in the waters on our property, and we wanted to do a riparian enhancement project to rejuvenate them," Hart said. "A portion of the capital from our conservation easement paid for our attorney's fees to get permitted. We became the first private-property owner to obtain protection agreements for Coho salmon."

Monetary advantages of easements can take three forms, according to Misti Schmidt, a lawyer and partner at San Francisco firm Conservation Partners LLP, which focuses on conservation transactions like easements.

"With estate taxes, you're purposely devaluing your asset, which can reduce your exposure. For income taxes, there's an immediate benefit, because while most donations to reduce capital gains are limited to 30%, easements are capped at 50%. Finally, you might get a new assessment after an easement transfer, which could reduce property taxes," Schmidt said.

There are two types of easements, said Clark of the Texas Agricultural Land Trust. A donated easement offers "no compensation and can get done within four or five months. A landowner might have an urgent need for those, like age or health," he said.

Purchase or bargain-sale easements, where landowners get some financial reward, can take as long as 18 months to complete, he said. "We match the property and a landowner's objectives with a potential funder, whether that's the [U.S. agriculture department] or a state-government funding source. There are also private foundations with a focus on conservation and corporate donors," he said.

When the trust closes on the land, the owner receives about half the value of the easement in cash, Clark said. “A 40% easement is quite common. On property valued at $1 million, that’s worth $400,000. The owner typically receives half that amount upfront, and the IRS allows you to deduct the rest as a charitable donation.”

Schmidt, the attorney, said easements are not quick-cash schemes.

“This isn’t fast, free money. Some people have been inflating the value of easements, and the IRS has been pursuing them quite aggressively,” she said. “The value of an easement is based on the difference in the property’s value before and after an easement is granted, not on the full value of the land, which is effectively reduced by the easement. You don’t get a $20 million easement if you think your land is worth $20 million.”

In fact, the IRS has reportedly been investigating some “speculative” conservation transactions; one case reduced a $41.6 million deduction claimed by an Alabama partnership to $800,000.

But most landowners have the best intentions, said Wayburn of Pacific Forest Trust. “The forests that sustain us are also sustained by us. Easements are an opportunity for landowners to do the right thing and have it last,” she said. “Having a land trust work with you means you’re going to have a forever partner who’s going to fulfill what you want done with that land.”