THE ROLE OF LAND TRUSTS IN PROTECTION OF AGRICULTURAL AND OPEN SPACE LAND: IMPLICATIONS FOR NATURAL RESOURCE ECONOMISTS IN THE LAND-GRANT SYSTEM

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Introduction

The decade of the 1990s witnessed a renewed surge of interest in protection of agricultural and other open space land from development. In the previous period of concern, immediately before and after release of the National Agricultural Lands Study report in 1981, primary emphasis was placed on the overall rate of farmland conversion and possible implications for food production capacity (Libby et al., 1998). This time around the emphasis is focused more generally upon open space, with particular interest not only in farmland but also land providing special environmental or scenic amenities. The current concern is largely about the pattern of urban/suburban development in local areas and represents a strong reaction to the accelerated pace of urban sprawl (Daniels, 2000; Garkovich, 2000).

There has been a shift, too, in the approach to protection of agricultural land in public sector initiatives, toward use of so-called PACE programs that involve purchase of agricultural conservation easements. According to fact sheets published by the American Farmland Trust, during the 1990s the number of state PACE programs doubled from 10 to 20, while the number of local PACE programs more than doubled, from 15 to 34 (AFT, 2000). The support for more general land protection programs has clearly strengthened through the 1990s as well. The Land Trust Alliance reported that 1998 and 1999 saw a nearly 90% success rate for the more than 100 state and local ballot measures each year calling for greater funding of programs to protect open space or establish parks and green ways (LTA, 2000).

The Recent Growth in Private Land Trust Activity

However, even given this upward trend in public sector activity to protect land, many people and groups around the country appear unsatisfied and unwilling to rely exclusively on public sector initiatives. As Gustanski (2000) sees it:

> Many people across the country have become frustrated and disillusioned by the failings of various government programs to adequately protect cherished lands from sprawling development. This disappointment factor has played a significant role in the phenomenal growth of land trusts (p. 17).

In a 1996 national survey, Gustanski found that only 4.7% of respondents agreed that "too much is already done to protect open space," while 77.7% agreed that "policies protecting open space could be stronger."

The Land Trust Alliance, which was formed in 1981, periodically conducts a National Land Trust census. Data from the 1988 and 1998 censuses characterize the nature of this growth in land trust activity. While the Nature Conservancy, having protected about 11 million acres of land to date, continues to play a dominant national role among private land trusts, the rapid growth over this decade was at the local and regional level, where the number of private land trusts increased by over 50% between 1988 and 1998, from about 750 to over 1,200. Even more impressive has been the growth in acreage protected by local and regional land trusts, which more than doubled between 1988 and 1998 from about 2 million to 4.7 million (LTA, 2000). The types of land protected are listed in Table 1, along with the percentage of land trusts involved in protecting each type.

This estimated 4.7 million acres nationally was protected by one of four methods: 1) acquiring and holding fee simple ownership; 2) acquiring a conservation easement; 3) acquiring ownership and transferring it to a governmental agency; or 4) other means, such as deed restric-

tions or acquisition of mineral rights. The number of acres protected by these methods as of 1988 and 1998 is presented in Table 2. Note the increasing relative importance of conservation easements over this period (LTA, 2000).

The number of land trusts in 12 Southeastern states has grown faster than the number nationally, more than doubling from 65 to 142 between 1988 and 1998. The number of land trusts and the acreage protected by the first three methods as of 1998 in these 12 Southeastern states is presented in Table 3, along with the percentage distribution of acreage among these three methods for the Southeastern region and nationally. Note that while nationally the highest percentage of land is protected through acquisition of conservation easements (43.5%), this method is even more important, relatively speaking, in the Southeastern region (60.8%). This is not surprising, given that over the 1988-1998 period: a) the easement method has become relatively more popular, compared to the other two methods; and b) private land trust activity has grown more rapidly in the Southeastern region, compared to the national average (LTA, 2000).

The Role of Federal and State Tax Policies

While the first land trust was formed in 1891 and approximately 200 existed as of 1980, the rapid growth in land trust activity over the last two decades was certainly facilitated by an obscure provision in the Tax Reform Act of 1976. Section 170(f) allows a taxpayer to claim an income tax deduction for the charitable donation of a 30-year conservation or historic preservation easement to a qualified charitable donee. A year later the law was amended to require donated easements be perpetual. In 1980, new tax legislation slightly modified the rules for deductibility. Section 170(h) requires that land provide "significant public benefit" to qualify for a tax deduction. While land trust representatives were initially concerned about the matter of how

this phrase might be interpreted, a series of favorable IRS rulings in the early 1980s reassured representatives that the phrase would be broadly interpreted (Small, 2000).

An additional tax incentive for donation of conservation easements was included in the 1997 American Farm and Ranch Protection Act. Section 2031(c) essentially says that when an owner of land subject to a section 170(h) conservation easement dies, he/she can exclude up to 40% of the value of this land for federal estate tax purposes if:

- the land is within a 25-mile radius of a metropolitan statistical area, as defined by the Office of Management and Budget as typically an area with a population over of 50,000, or a national park or wilderness area, or within 10 miles of an urban national forest;
- the easement was donated, is perpetual, and otherwise meets the requirements of section 170(h), though easements qualifying solely because they protect historic assets are not eligible for section 2031(c) benefits;
- the land was owned by the decedent or a member of the decedent's family for at least three years immediately prior to the decedent's death;
- the easement was donated by the decedent or a member of the decedent's family; and
- the easement prohibits all but minimal commercial recreational use of the land.

The maximum amount that could be excluded in 1998 was $100,000, increasing by $100,000 each year up to a maximum exclusion of $500,000 in 2002 and after. Section 2031(c) also includes a provision that allows an executor, a trustee or an heir to donate a qualified conservation easement after the death of the landowner (Small, 2000). Legislative proposals in 1999 called for widening or completely eliminating the geographic limitation, eliminating the $500,000 cap, and allowing sold as well as donated easements to qualify, but none of these changes have become law.

States have also taken steps to increase the financial incentives for donation of conservation easements. At least one, New Jersey, began January 1, 2000, allowing a deduction for state income tax purposes equal to the amount of federal tax deduction allowed (LTA, 2000). Virginia in 1997 established the Open Space Lands Preservation Trust Fund, which will be used

primarily to reimburse landowners for costs associated with conservation easement donations, e.g., legal, appraisal, and survey fees (Vance and Buttrick, 1998).

Significance of Land Trust Phenomenon for Natural Resource Economists

A traditional core area of interest for natural resource economists within the land-grant system has certainly been rural land: its allocation among uses, the intensity of a given use, its market price, the social values generated. We have much to learn about the economics of land markets from careful observation and analysis of the recent surge in land trust activity, and much to potentially contribute toward improving the performance of land markets. The land trust phenomenon presents opportunities in all three areas of our professional activity: research, extension, and teaching.

Research

There are at least four research thrusts that might be productively pursued with respect to land trusts. The first would involve attempts to explain or understand patterns of land trust activity with statistical models or more qualitative approaches. For example, a student working on an M.S. thesis in Geography at The University of Tennessee is seeking to explain the geographic pattern of land trust activity in the Southern Appalachian Region on the basis of county level variables reflecting development pressure, demographics and socioeconomic characteristics. He is supplementing the statistical analysis with case studies of selected land trusts in which information on factors that influenced establishment is obtained from interviews of representatives. He is also seeking to develop an understanding of factors affecting the success of land trusts, as reflected by measures related to acres of land protected.

A second research thrust would involve attempts to derive from observations on land trust activity information regarding the type and magnitude of nonmarket values associated with

protection of agricultural and other open space land from development. General surveys like the one by Gustanski noted above certainly suggest that substantial nonmarket benefits exist. A recent contingent valuation study found that residents of three counties on the urban-rural fringe of Chicago would be willing to pay nearly $500 a year for five years to permanently protect 20,000 acres of farmland in their county from development (AFT, 1999). However, land trust activity is not hypothetical. Behavior on the part of three distinct groups of people certainly reveals something about nonmarket values. One group is made up of people who make financial contributions to land trusts in support of land protection, even though the potential for "free-riding" is clearly present. A second group includes people who donate time or in-kind services as volunteers in land trust efforts. A third group is made up of landowners who donate land or easements at something less than market value. Additional insight regarding nonmarket values can perhaps also be derived from analyses of the criteria employed in prioritization of land or easement acquisitions by land trusts. Findings from such analyses might help in discerning something about the relative importance of the multiple benefits that generally result from land protection, including local agricultural activity, visual amenities, wildlife habitat and others. Looking at this prioritization issue from the other direction, further contingent valuation research seeking to identify the relative importance of the various benefits of open space land may be useful to land trusts in refining their criteria for prioritization.

A third research thrust would address the functioning of markets for conservation easements. Two recent ERS reports have provided a very good starting point for further research along this line. One focuses upon state and local purchase of development rights (PDR) programs, which would include the PACE programs mentioned earlier (Buist, *et al*., 1995). The other focuses upon the general notion of markets for "partial interests in land," with reference not

only to state and local farmland protection efforts but also to federal efforts through the Conservation Reserve Program and Wetlands Reserve Program (Wiebe, *et al*., 1996). Together, these two reports provide an excellent introduction to issues related to easement valuation, the structure of easement markets and the importance of transactions costs. Each report also suggests priorities for future research. The potential appears great for research designed to identify strategies that reduce transactions costs or increase the efficiency of easement markets by some other means. Such work would probably necessitate collaboration with legal experts.

A fourth research thrust would involve analysis of factors, including but not limited to tax policies, that influence landowners' willingness to donate conservation easements at something below market value. As with historical research on identifying the most cost-effective strategies for inducing farmers to adopt BMPs for soil erosion control, this research would seek to identify changes in tax policies or other strategies that would induce easement donations at lowest public cost.

Extension

Extension educators within agricultural and natural resource economics have a potentially fruitful role to play with at least three distinct audiences. One would be owners of agricultural and other open space land in rural areas who may wish to sell or donate a conservation easement to a land trust. A second audience would be rural residents who might be interested in establishing a land trust in their community. A third audience would be the general public, potential contributors to land trust activities. Edelman, Roe and Patton (1999) provide a very nice primer on broad options for addressing land use conflict on the rural-urban fringe, but only a passing reference is made to the role of land trusts. The idea of providing a primer on land trusts, the basic mechanics of conservation easements and potential tax savings, needs to be seriously consid-

ered. Effective education of these three audiences on this subject may well reduce transactions costs and improve the efficiency of easement markets. Greater awareness may facilitate mutually beneficial transactions between land trusts and rural landowners and generate external benefits to the wider community as well.

Teaching

The land trust phenomenon provides a wealth of opportunities for creative use in teaching important concepts in natural resource economics courses. To start with, the issue motivating land trust activity is one that students probably find interesting from one perspective or another. The argument for public initiatives to protect land, including tax subsidies for donations to land trusts, stems from the notion that the market allocation of land may be economically inefficient if externalities are present. The public good characteristics of the external benefits of open space land, nonrivalry and nonexclusiveness, are relatively easy for students to recognize and understand, as is the likelihood of a free rider problem. Illustration of the usefulness and limitations of contingent valuation methods in measuring the magnitude of such benefits is also possible. A class experiment where contributions to a real or hypothetical land trust are solicited could be employed very effectively. If there is an active land trust within a reasonable distance, having a representative as a guest speaker, or structuring an interview with them over the telephone, would add some realism to treatment of the subject.

For instructors with an institutional bent, the emergence of land trusts, and particularly the growing use of conservation easements, represents a step in institutional evolution that merits special attention. As Squires (2000) notes:

> The conservation easement is a recent method of protecting the land surface. In many ways, it is a hybrid of the tools that have been used to protect lands through the twentieth century (p. xxi).

Squires goes on to quote Diehl and Barrett (1988) in arguing that certain attributes have made conservation easements increasingly appealing:

> Conservation easements occupy an appealing niche in the array of land protection techniques, halfway between outright public or nonprofit ownership, at one extreme and government land-use regulation at the other. Easements are more permanent and often restrictive than land use regulation, which can shift with the political winds. At the same time, easements are tailored to the protection requirements of the particular property and to the desires of the individual landowner. Easements keep property in private hands and on the tax roles, and also carry a lower initial price tag than outright acquisition (p. xxii-xxiii).

Putting it in other terms, conservation easements allow the potential for increased economic efficiency in the use of rural land (by protecting the external benefits of open space) because they are flexible enough and redistribute benefits and costs in such a way that voluntary, mutual beneficial transactions can occur. A related question that would appear to be a good one for class discussion is: Given a limited amount of public funds, would these funds be better used in a government PDR program or as tax credits to induce financial contributions and donations of conservation easements to private land trusts?

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Table 1. Types of Land Protected by Local and Regional Land Trusts

Types of Land	Percent of Land Trusts
Wetlands	55
Watersheds/water quality	53
Forests	50
River corridors	46
Ranches and farmland	40
Wildlife habitat	38
Trails	33
Green ways	31
Urban lands	11

Source: Land Trust Alliance, 2000.

Table 2. Land Protected by Local and Regional Land Trusts

Method	Acres Protected		
	1988	1998	Percent Increase
Conservation easements	290,000	1,385,000	378
Owned by land trusts	300,000	828,000	176
Transferred to government agencies or protected by other means	1,410,000	2,487,000	76
Total	2,000,000	4,700,000	135

Source: Land Trust Alliance (2000).

Table 3. Local and Regional Land Trust Activity as of 1998 in the Southeastern Region

States	Number of Land Trusts	Total Acres Protected	Acres Owned	Acres Under Easement	Acres Transferred to Government Agencies
Alabama	3	31,472	5,472	0	26,000
Arkansas	2	1,666	1,581	85	0
Florida	29	56,839	9,899	17,071	29,869
Georgia	23	7,646	1,457	6,189	0
Kentucky	9	2,997	1,296	12	1,689
Louisiana	1	15,555	651	14,604	300
Mississippi	1	2,973	1,098	1,875	0
North Carolina	22	37,741	6,259	26,564	4,918
South Carolina	14	29,749	4,978	22,071	2,700
Tennessee	13	23,637	6,932	1,797	14,908
Virginia	16	132,953	11,368	118,402	3,183
West Virginia	9	364	289	75	0
Southeastern Region Total	142	343,592[1]	51,280 14.9%	208,745 60.8%	83,567 24.3%
National Total	1,213	3,183,570[1]	827,566 26.0%	1,384,883 43.5%	971,121 30.5%

[1]Does not include areas protected by other means, such as deed restrictions, and acquisition of mineral rights.

Source: Land Trust Alliance (2000).

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