



The League of Women Voters of Arkansas

State Study 2008

Written and Researched by

Joyce Hale - Washington County - joyhale43@sbcglobal.net

Diane Gately - Benton County - jamesgately@hotmail.com

Providing State Tax Incentives for Land Conservation

Member Leagues:

Benton County

Fairfield Bay

Fort Smith

Jonesboro

Pulaski County

Washington County

TABLE of CONTENTS

Introduction and Study Suggestions

Study's Purpose & General Background

Conservation Easements 101

**Section I. Interest in Land Preservation
Increases**

Section II. Land Protection Methods Differ

**Section III. State Legislation Varies with
Customized Conservation Objectives**

**Section IV. Permanent Land Restrictions
Create Concerns**

Consensus Statements

Appendix

INTRODUCTION: Why this study and why now?

With all the concerns and issues worthy of our attention, why should land conservation be studied now? In January of 2009, the Arkansas Legislature will convene. This state is undergoing dramatic changes with natural gas development, increasing populations and urbanization. Many living in The Natural State have taken the abundance of land, water and resources for granted. The time has come to carefully assess the rapidly transitioning use of land and what long term problems may be waiting in the wings for agriculture, water and forests.

Other states experience many of these same problems. Choosing not to develop land vital for food and fiber production, water quality and quantity, recreation and historic preservation is necessary for sustainability. Twelve States along with Federal Government offer tax incentives for qualified conservation easements. Protecting land in this way is the most common method used. However, it is a costly process for the land owners and not a likely choice without tax incentives to help offset the expense. For Arkansas to encourage land owners to participate, the state must introduce legislation to create a conservation program. If the League wishes to support this tax incentive a state study is needed. Without study and a consensus position, we will be unable to speak with a collective voice. Individual involvement is good, but a position taken on behalf of the LWVAR is much more potent.

Long ago, we prepared ourselves to speak on water issues. Last year LWVAR did its homework on the Fayetteville Shale Play. Our consensus positions are clearly listed in *Where We Stand*. Now there is a great concern for watershed protection. We must study the ways available to protect water quality and quantity and what new methods can do even more. Tax incentives may be an answer, but they must be studied and a consensus position taken.

Suggestions for using this material in your League study:

- 1. Read through this information as the basis for the study.**
- 2. Go to www.lwvarwc.org to see additional reference materials for each of the section of this report.**
- 3. Do your own Google search for more information. There is a great deal of information available.**
- 4. Plan to attend the LWVWC program November 19, 2008, 6:00 to 8:00 pm. at the Fayetteville Public Library for discussion of this study and a consensus activity.**

League of Women Voters of Arkansas State Study Providing State Tax Incentives for Land Conservation

August, 2008

Is It Appropriate to Use State Tax Dollars as an Incentive to Conserve Private Land?

Throughout the United States there is a lot of talk about urban sprawl, loss of family farms and ancestral property, inheritance concerns, natural gas development and biofuels, decline in watersheds and forests, endangered species, protecting recreational land, property rights, saving scenic and historic places and the list goes on and on. **A rapid change in land use is the common threat.** Some states have been out front creating the tools for their citizens to take personal action when they are concerned about issues impacting the use of land; however, Arkansans do not have these tools, and most do not even know of their existence.

When a landowner takes action to preserve all or part of his land and permanently restrict development, society as a whole should be aware of the impact that has on the character, economics, and sustainability of the community's future. Land preservation links a wide range of issues and demonstrates the need for interconnected answers.

Wise expenditure of tax dollars requires thorough evaluation and more than "feel good" answers. Preventive measures are almost always the least expensive way to address a problem. The current rate of change in land use must be evaluated to see if protection, with all of the related impacts, should be a priority at this time. A statewide study by the League of Women Voters would be useful in providing greater awareness of the national movement to preserve land, the methods implemented in other states and the appropriateness of introducing similar programs for Arkansas's 2009 legislative session.

Following is a study outline for local Leagues to use in preparing for a consensus vote concerning the use of state tax incentives for land and resource conservation. References for I, II, III and IV can be found in the workbook divider sections. Leagues should review this information before holding discussions. Some may wish to divide the material between members who can then share a summary report on each section.

I. Interest in Land Preservation Increases - Natural resources are under pressure from population increases, energy demands and global climate change. The Federal Government and many states have begun taking action to create conservation programs with participation incentives.

- A. Should Arkansas set a goal for what and how much land to conserve?
- B. If so, by what measurement?
- C. Quality vs. Quantity?

II. Land Conservation Options - Conserving natural resources can be accomplished through different means. Private and public options are available.

- A. What ways are used to protect land and resources and what are their advantages and disadvantages?
- B. Are there currently enough tools for landowners to conserve their land?
- C. Is the information getting to communities about available options?

III. States' Legislation Varies with Customized Conservation Objectives - There are many differences in conservation bills adopted by other states. There is no one-size-fits-all when it comes to bill content.

- A. Should the government only fund the preservation of lands that meet certain criteria? If so, who determines the criteria?
- B. What are the important considerations a state must define in the design of its program?
- C. Who should provide oversight and stewardship?

IV. Permanent Land Restrictions Create Concerns. Some would say the most important property right is to determine your land's future protection. Others say this should be left for future generations to decide.

- A. What do you think about land being preserved "in perpetuity" vs. a shorter length of time?
- B. What is gained and what is lost?

Conservation Easements 101

A conservation easement defines and separates the development value from a parcel of land. Development rights are similar to mineral rights: they represent only a portion of the land's total value. This amount can be estimated by appraisal. For example, an 80 acre farm may be worth \$10,000 per acre if sold for home sites, but only \$2,500 if restricted, by an easement, to agricultural use. This means the parcel's development value would be \$7,500 per acre (or \$600,000 for the entire 80 acres) -- that would be the cost to purchase the development rights.

In the United States, a conservation easement is a legally enforceable land preservation agreement between a landowner and a government agency or a qualified land protection organization, for the purposes of conservation. It restricts real estate development, commercial and industrial uses, and certain other activities on a property to a mutually agreed upon level. The property remains the private property of the landowner.

The decision to place a conservation easement on a property is strictly a voluntary one where the easement is sold or donated. The restrictions of the easement, once set in place, "run with the land" and are binding on all future owners of the property (in other words, the restrictions are perpetual). The restrictions are spelled out in a legal document that is recorded in the local land records and the easement becomes a part of the chain of title for the property. Appraisals of the value of the easement, and financial arrangements between the parties (land owner and land trust), generally are kept private.

The primary purpose of a conservation easement is to protect land from certain forms of development or use. Lands for which conservation easements may be desirable include agricultural land, timber resources, and/or other valuable natural resources such as wildlife habitat, clean water, clean air, or scenic open space. Protection is achieved primarily by separating the right to subdivide and build on the land from the other rights of ownership. The landowner who gives up these "development rights" continues to privately own and manage the land and may receive significant state and federal tax advantages for having donated and/or sold the conservation easement. Perhaps more importantly, the landowner has contributed to the public good by preserving the conservation values associated with their land for future generations. In accepting the conservation easement, the easement holder has a responsibility to monitor future uses of the land to ensure compliance with the terms of the easement and to enforce the original agreement if a violation occurs.

Although a conservation easement prohibits certain uses by the landowner, such an easement does not make the land public. On the contrary, many conservation easements confer no use of the land either to the easement holder or to the public. Some conservation easements confer specific uses to the easement holder or to the public. These details are spelled out in the legal document that creates the conservation easement.

(Taken from Wikipedia)

SECTION I. Interest in Land Conservation Increases –

There is a growing concern that as populations continue to grow, a basic amount of productive land must remain off-limits from development if our country is to be self sufficient and capable of producing enough domestic food and fiber needs. Water, which will ultimately be recognized as our most important natural resource, is also in crisis. Protecting land around lakes, rivers and streams so that natural filtering can continue is vital to water quality and keeping water healthy at an affordable cost. Keeping surfaces from being paved or built on is necessary for the sustainable recharge of groundwater.

Many owners of particularly significant land (quality farmland and timber, critical watersheds, wildlife habitat and historic sites) wish to prevent developing their land for a variety of personal reasons. They may look for ways to see that farming can continue as urbanization spreads. They may want to protect their heirs from estate taxes. Protecting certain lands is considered to be a benefit for the whole society. More and more tax payers are willing to pay for resource protection when they see value for themselves and future generations

Success for Conservation and the Environment

Over half the land in America is in farms and ranches, and the use of this land to produce food, fiber and energy has an enormous impact on our environment. Farm bill conservation programs are critical to helping farmers and ranchers improve their land and protect our natural resources.

Some of the most significant gains in the 2008 Farm Bill were made in the area of conservation. **New funding increased by over \$4 billion, which translates into more stewardship practices and a healthier environment:** cleaner water, reduced erosion and enhanced wildlife habitat.



(Taken from The American Farmland Trust's *Analysis of the 2008 Farm Bill*)

SECTION II. Land Conservation Options

There are many ways for individuals and governments to achieve land conservation. Some are old techniques that continue to be used. Some are new approaches developed to provide incentives and increase participation. Some methods depend entirely on private funding and some are funded with public money. Programs at all levels of government authority exist from the Federal Farm Bill to local land use ordinances. There are advantages and disadvantages to all. Here are a few examples:

Best Management Practices (BMP) determined through scientific research are used by property owners to protect their resources and the environment. Minimum performance levels may be mandated through regulations, but there are always additional measures individuals and corporations can take to provide greater protection and conscientious stewardship.

Private Land Trusts are non-profit organizations which service property owners who need a steward to hold their conservation easement. The interests of both the owner and trust organization are bound by contract to be managed in perpetuity. This is the only method of conservation that assures permanent adherence to the property owner's wishes. National organizations like The Nature Conservancy, Ducks Unlimited and American Farmland Trust are highly experienced in conserving land and have for many years. However, small local and regional land trusts are forming as people consider conservation easements to be the most successful method of conserving land. Regional and local land trusts operating in Arkansas are Ozark Regional Land Trust, the Buffalo River Stewardship Foundation, Northwest Arkansas Land Trust, the Land Trust of Arkansas, the Mississippi River Trust and Central Arkansas Land Trust.

Federal Conservation Programs of many types are available to states and individuals. Many times state agencies provide matching funds to secure the Federal funding. Here are just a few examples:

- a. Agricultural set-aside acreages to farmers who take land out of production,
- b. Conservation Reserve Enhancement Program (CREP) for watershed protection with 15-year funding assistance or
- c. The Forest Legacy Program which seeks conservation easements from privately owned forest lands.

Transfer of Development Rights (TDR) – Transfer of development rights programs allow landowners to transfer the right to develop one parcel of land to a different parcel of land. Generally, TDR programs are established by local zoning ordinances. In the context of farmland protection, TDR is used to shift development from agricultural areas to designated growth zones closer to municipal services.

Purchase of Development Rights (PDR) – Purchase of development rights programs provide a way to financially compensate willing landowners for not developing their land. When buying development rights, the community obtains a legal easement, sometimes referred to as a conservation easement, which (usually) permanently restricts development on the land. The landowner, however, still owns the land and can use or sell it for purposes specified in the easement, such as farming, timber production, or hunting. This method is very expensive and can generally be considered only in cases of significant importance.

Development Impact Fees – Charges made to new developments are levied to cover the cost of extending new public services. When these costs are high enough, there is a greater incentive to develop “in-fill” urban areas. The result can be a slowing down of urban sprawl.

SECTION III. Designing Conservation Tax Credit Legislation:

It has been twenty-three years since North Carolina enacted the nation's first state tax credit program for land conservation donations. Since that time, the tool has become increasingly popular, with eleven additional states passing tax credit legislation since 1999.

While the programs all share the same basic elements—limitations on credits, definition of conservation values, and eligibility of entities that may claim credits—they vary dramatically within these categories.

Legislatures, land conservation organizations, and other program supporters must determine exactly what they are trying to accomplish with a conservation tax credit program to ensure that the provisions in their legislation will achieve the desired results.

From: State Conservation Tax Credits IMPACT AND ANALYSIS, Conservation Resource Center, Boulder, CO.

Conservation tax credit legislation should address the following questions:

1. Which lands are eligible to earn conservation credit? Must the parcel meet only the minimum requirements of the Internal Revenue Service or additional state restrictions?
2. How can Arkansas assure taxpayers and the IRS that conservation credits earned are supported by qualified land donations?
3. What state authority will oversee the program?
4. What will be the credit value and limitations?
 - a. Value as a percentage of full market value of donated land
 - b. Maximum credit allowed, if any
 - c. Cap on credits applied to taxes per year, if any
 - d. Limitation on credits that may be claimed by one individual/entity, if any
 - e. State wide program cap, if any
 - f. Sunset date, if any
5. What entities are eligible to hold a donation?
 - a. Groups requiring only IRC §170(h) federal eligibility
 - b. Additional State eligibility requirements
6. Can unused tax credits be used in future years?
7. If the person eligible for tax credits cannot use it, will credits be transferable through an approved broker service?
8. Are tax credits refundable?
9. Are receiving organizations (land trusts) required to have certification?

SECTION IV. Permanent Land Restrictions Create Concerns

Combine private property, Government control, conservation, taxes, and natural resources into one discussion and you are guaranteed strong opinions with wide ranging positions. The bounty of open land settled by independent, hard working individuals laid the foundation for a strong commitment to property rights in our country.

Our growing population requires more energy, food and fiber production, water and other natural resources. Land appears to be under particular pressure. Opposing points of view need to find common ground. How can private ownership be maintained and respected while at the same time limit land's development to assure a sustainable future?

In order to find agreement where all points of view can unite, there is one word of primary importance for any conservation program. It must be

V O L U N T A R Y .

For conservation easements to be acceptable to every one of varying opinions, the choice to restrict development must originate with the land owner. The right to allow property its natural functions, to offset the pressures of urbanization, to keep farmland affordable and available for production, to limit the impact of sprawl and altered viewscapes, historic sites and habitats, to protect watersheds both for quality and quantity, to keep property available to one's heirs... these should be the ultimate property rights of a landowner.

Most of the opposition to removing development rights expresses concern that this denies future generations of options that should be left to them. Making a decision "in perpetuity" throws out a red flag of caution. And well it should. Permanently restricting development is not an action to take without considerable thought. Property rights supporters argue that the financial advantages of future development should not be limited.

A common consideration of land's value is expressed as Highest and Best Use. According to Wikipedia: The definition of Highest and Best Use varies, but generally the use must be:

1. legally allowable
2. physically possible
3. financially feasible
4. maximally productive

Conservation easements are not acceptable to those who feel it is important to leave land without restrictions in order to maximize future development profits. Those in support of conservation have difficulty making counter arguments since financial comparisons are not easily defined. What is the dollar value of naturally clean water? Which will represent the highest-and-best-use of land in fifty years... farmland or a new housing development? Will the changes made to land's use be irreversible? How these questions are answered will reflect one's philosophy and priorities.

CONSENSUS STATEMENTS

1. Arkansas should offer state tax incentives to protect the following types of property:

a.) farmland with significant agricultural production value,

Consensus_____ No Consensus_____ Disagree_____

b.) forest land valued for timber production and/or watershed protection,

Consensus_____ No Consensus_____ Disagree_____

c.) watersheds that have significant impacts on water quality and quantity,

Consensus_____ No Consensus_____ Disagree_____

d.) wildlife habitat needed to provide stability for threatened species,

Consensus_____ No Consensus_____ Disagree_____

e.) historic sites with cultural significance.

Consensus_____ No Consensus_____ Disagree_____

2. If Arkansas establishes a land conservation incentive program the guidelines should define property eligibility more strictly than those provided by the Federal government.

Consensus_____ No Consensus_____ Disagree_____

3. The "Highest and Best Use" of land should consider conservation values that cannot be measured in financial terms.

Consensus_____ No Consensus_____ Disagree_____

4. A property owner's decision to conserve land should not bind or encumber future owners.

Consensus_____ No Consensus_____ Disagree_____

5. Persons or organizations eligible to hold donated conservation easements must demonstrate transaction transparency, the capacity for competent stewardship and some level of accreditation before receiving approval for tax credits.

Consensus_____ No Consensus_____ Disagree_____

6. Instruction approved by professional licensing boards should be required for Certified Public Accountants, attorneys, real estate brokers, financial advisors, estate planners and land appraisers before they are permitted to advise clients regarding the use of conservation easements.

Consensus_____ No Consensus_____ Disagree_____