



News

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Encouraging landowners to save the places they love

By ANN RICHARDS

The clock is ticking for landowners who want to take advantage of generous federal tax incentives encouraging conservation easement donations.

"I've never been busier," said Stephen J. Small, a Boston-based attorney who is considered one of the nation's leading authority on private land protection options and strategies.

At the University of Michigan-Flint recently, Small was the featured speaker for a six-city Webinar to inform tax and real estate attorneys, appraisers, and financial advisers about the expanded federal tax incentive for conservation easement donations, which is set to expire at the end of 2007. He also is the author of *Preserving Family Lands I, II and III*, which have sold more than 125,000 copies since the late 1980s.

"If anyone on the planet can make tax law interesting, it's Stephen," said Erin Heskett, director of the Land Trust Alliance (LTA) Midwest office.

Since 2000, the Washington, D.C.-based nonprofit has been granted more than \$1.6 million from the Mott Foundation to build the capacity and effectiveness of land trusts operating in the Great Lakes basin. Recently, LTA also received a multi-year, \$800,000 grant to launch a national land trust accreditation program. (See box.) LTA, along with the Lake Huron Alliance and the Center for Applied and Environmental Research at UM-Flint, sponsored the Webinar.

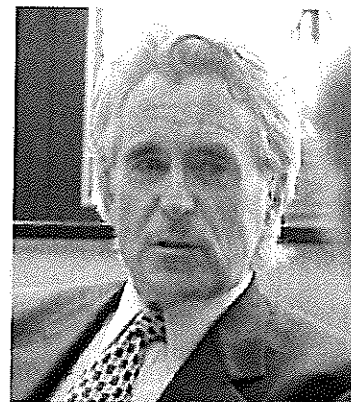
Small's enthusiasm for tax law began more than 20 years ago, during night classes at Georgetown University Law Center, where he authored a paper on the intersection of the tax code and historic preservation easements.

"There was no literature on the topic -- no one understood it," he said. "The more I looked for information, the more I became intrigued by the idea of using an old property law tool to accomplish social good."

After going to work for the U.S. Internal Revenue Service in the 1980s, Small had the opportunity to write the regulations for conservation easements.

"Call it serendipity, call it karma -- but among the 10 or so projects nobody wanted to deal with at the IRS was conservation easement law, and it landed on my desk," he said.

Today, more than 37 million acres of land in the U.S. are protected through easements, and there are 1,667 land trusts -- most of



Steven J. Small

which have sprung up in the past two decades. Much of this explosive growth is due to the income tax deductions available for gifts of conservation easements, first included in the Tax Reform Act of 1976 and then made permanent in Tax Treatment Extension Act of 1980.

Under a conservation easement, a landowner voluntarily agrees to restrict certain rights associated with his or her property. Such easements protect land for future generations while allowing owners to retain many private property rights, including living on and using their land while receiving an income tax deduction for the value they give up.

Under the prior income tax rules, an individual could deduct the value of a conservation easement donation generally up to 30 percent of the donor's adjusted gross income for the year, with a five-year carry-forward of any unused amount. Likewise, up to 10 percent of a corporation's taxable income could be deducted for the year in which a conservation easement was donated, again with a five-year carry-forward. For conservation easement gifts made in 2006 and 2007, however, the tax incentives are considerably more generous.

First, says Small, the value of an easement donation can be deducted up to 50 percent of an individual's adjusted gross income for the year of the gift, with a 15-year carry-forward of any unused deduction amount.

For a qualifying farmer or rancher -- which includes both individuals and corporations -- the deduction can be greater. In certain cases, says Small, 100 percent of the donor's taxable income in the year the gift is given can be deducted, with a 15-year carry-forward.

"This is a tool for people who love their land and don't want to see it paved over," Small said. "When you donate an easement, you're giving up value. If done properly, it's real philanthropy -- tax deductions can never mathematically replace the full dollar value of your land."

Although many millions of acres of land have been protected over the past 20 years, conservation easements are complicated because each is unique, he said.

"One of the biggest problems in the field today is lack of capacity. A major impediment to easement donations is the client's lawyer who doesn't understand the regulations. The professional planning community is way behind."

Small's seminars are designed to correct this deficit.

"The work is getting more complicated. Although a lot of the land trusts in this country are run by intelligent, sophisticated people, there are a number who have not done their homework.

"Giving away land is easy -- you just sign a deed. If you want to donate a conservation easement, you need to be sure who will be enforcing and monitoring the agreed restrictions in perpetuity. Structuring easements requires lots of due diligence and legal work."

Another challenge is the grassroots nature of land trusts, Small said.

"In this work, you can't sit back and wait for people to come to you. The word isn't out to all the landowners who need to know about conservation easements.

"Land trusts need to take on the responsibility of outreach. Land trusts need to increase their visibility by bringing in speakers, offering programs and technical assistance."

Small also is a proponent of accreditation.

"The field is enormously challenging because it is so new. Land trusts need to understand their responsibilities once they hold an easement. They need to build their ability to do the deal.

"That's why I do a lot of speaking. I talk about the tax code, not flora and fauna."

Thanks to the current incentive for private land protection, there's been a significant increase in donations, he said.

"There's a chance that these incentives will be extended beyond 2007. But to take advantage of this opportunity, people need to

be in touch with their local land trusts now. It's the time to be creative, not constrained, if you're passionate about protecting your land."

Mott funds national land trust training and education

Intense public scrutiny over the past two years -- including media criticism, Congressional hearings, and federal audits of individual land trusts -- has focused a bright light on the need for a uniform level of competency and integrity throughout the land trust sector.

In response to this criticism, the Land Trust Alliance (LTA) recently launched a voluntary accreditation program, which provides independent certification that land trusts are adhering to standards and practices put into place by the alliance in 2005. These Land Trust Standards and Practices -- the universally accepted standard for land trust quality -- now are a condition of LTA membership.

To help land trusts prepare for accreditation as well as to establish the commission that will oversee the review process, the Mott Foundation made a multi-year, \$800,000 grant to provide training and other capacity-building activities.

The accreditation program will support the assessment of 400 land trusts and provide more than 300 training sessions for 14,000 land trust professionals and volunteers. It also will help establish the Land Trust Accreditation Commission, an independent entity that will conduct organizational reviews.

Founded in 1982, LTA serves as the umbrella organization representing more than 1,600 land trusts across the nation, promoting voluntary land conservation and working to strengthen the land trust movement.

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