

Finding a Big Tax Break in the Backyard

By NANCY D. HOLT
Special Co THE WALL STREET JOURNAL

MILLIONAIRE DEVELOPER BILL Carstens has bought and sold thousands of acres around the swank ski town of Telluride, Colo. But last year, he decided to keep a scenic, 2,000-acre parcel for himself and build his dream house there. "I felt that it should never be developed," he says.

Because he felt that way, Mr. Carstens got a \$4.5 million tax break.

Imagine if you had a really big, really nice backyard—and you could get a tax deduction just for keeping it that way. "Conservation easements," part of a 20-year-old federal program designed to preserve natural areas, have become an increasingly popular way for wealthy people to get a tax cut. To qualify, owners must promise to limit development of their land forever. But in many cases, they never planned on developing the land anyway.

"It really is a rich person's bill," says Willis Carpenter, a Denver real-estate attorney who put a conservation easement on his Colorado ranch. "But rich people own the really desirable, scenic ranches, and rich people need tax deductions." Mr. Carpenter says he supports the program as a way to encourage land preservation at no direct cost to the government.

Here is how it works: By putting land under a conservation easement, the owner gives up some development rights, technically donating them to the government or a nonprofit entity such as a land trust. Since this theoretically lowers the land's value, the owner gets to take a charitable income-tax deduction (and also reduce the land valuation for estate-tax purposes). Meanwhile, the owner still keeps title to the land and can restrict all public access. In fact, when the owner dies, the land doesn't go to the trust; it is distributed according to the owner's will, with the use restrictions, just like any other property.

In Mr. Carstens's case, he agreed to limit development of his 2,000-acre property to six home sites. Without any restrictions, he could have built 57 houses on the property. (Currently, it is home to a large herd of elk.) The restriction caused the appraised value of his land to fall to \$6.5 million from \$11 million. Mr. Carstens said he may take the \$4.5 mil-

lion drop in value as a tax deduction over a six-year period.

Even though the public can't use such land, "there are vast public benefits," says Vince Kontny, former president and chief executive of Fluor Corp., who put conservation easements on two 400-acre ranches he owns in Colorado. "People can drive by and not see a bunch of condos there. Instead, they see cowboys working the cattle, like they've done for years," says Mr. Kontny, who has continued to operate his properties as working ranches. The easement program is "protecting the Western way of life, our heritage and our values," he says. The program also enabled Mr. Kontny to qualify for a \$3 million tax break.

Some members of the public aren't persuaded. Tim Dougherty, a Denver-area homeowner with a small backyard, views the program as "just another tax break for the wealthy." In Mr. Dougherty's view, "the people who use it are people who wouldn't develop their land anyway."

Nationwide, the number of acres under conservation easement is growing. In 1994, the latest year for which national data is available, conservation easements protected 740,000 acres, up from some 450,000 acres in 1990, according to the Land Trust Alliance in Washington, D.C. Any size parcel may qualify for the program, so long as it is significant open space, a wildlife habitat, or a historic site, says Denver real-estate lawyer Bill Silberstein.

The acreage and the tax deductions involved are particularly large in the Rocky Mountain region, because of zooming land values, mounting development pressures and the sheer size of the parcels being protected. In Colorado, for example, the amount of land under conservation easement doubled to about 280,000 acres in the three years prior to this year. An influx of wealthy ranch buyers has also helped. Financial mogul Charles Schwab, media ty-

coon Ted Turner and director Oliver Stone are among those who have qualified for tax deductions by putting Rocky Mountain-area properties under conservation easements.

Even though the tax deduction is theoretically designed to compensate for a reduction in property values, some owners concede it is unclear whether land under easement is necessarily worth less. In fact, such land might actually be worth more over the long run, simply because large, pristine ranches are becoming scarce. Others argue that land with easements might be hard to sell if the booming real-estate market one day sours. In recent years a handful of ranches under easement have sold, but it is "inconclusive" whether the development restrictions have hurt their value, says Mark Weston, a principal at the Denver appraisal firm Hunsperger & Weston Ltd.

One recent seller of a property under conservation easement was Mr. Stone. His 975-acre Telluride ranch sold for \$6 million in June. He had paid \$3.2 million for the land several years ago, and spent \$3 million building a house on it. A spokesman for Mr. Stone, Steven Pines, says the director "made nothing" on the sale. However, he did qualify for a huge tax deduction. The conservation easement, obtained last December, lowered the appraised value of the land to \$3.1 million from \$6.5 million. That allowed Mr. Stone to take the \$3.4 million difference as a tax deduction over the next six years.

Easements aren't used solely by rich newcomers. "It's a misconception that it's just Ted Turner doing these easements," says John Wilson, managing director of the Montana Land Reliance, the state's largest land trust. (However, Mr. Turner, a part-time buffalo rancher, has obtained some of the state's largest conservation easements. In the late 1980s, he placed two of his ranches, totaling 130,000 acres, under easement.)

In the West, long-time ranchers use easements to reduce the appraised value of their land so their heirs can pay lower estate taxes and keep the land in the family. Last year, half of the 43 conservation easements donated to Montana's largest land trust were obtained from long-time residents—even though, in most cases, they are independent ranchers who don't earn enough money to take full advantage of the tax deduction. In some cases, ranch-

(over please)

ers sell their development rights to land trusts and government entities, rather than donate them under the easement program. However, there isn't enough money to pay everyone who wants to do so.

Many property owners say the tax break wasn't a major factor in the decision to put land under easement. Mr. Schwab, chairman of the discount-brokerage house that bears his name, says tax benefits amounted only to a "marginal nudge" toward putting easements on two contiguous, 650-acre ranches he owns south of Missoula, Mont.

"Don't enter into this with the thought that it will be a big moneymaker, because you're giving up enormous forward profits," he says. "You have to go into it with the view of being a contributor for future generations."

Mr. Kontny, the retired Fluor Corp. executive, says his ranches lost 40% of their appraised value when he put them under easement. But he says he was more concerned with preserving his properties than getting a tax break. At his 400-acre Last Dollar Ranch, often featured in Marlboro cigarette ads, he restored the Victorian house and 10 log barns to look much as they would have in the 1920s. On his Centennial Ranch, he erected a timber-frame barn that won an award from the county historical society.

"They're just beautiful places," he says, "and in 100 years, they're still going to be beautiful places."