

DRAFT



MEMORANDUM

Date: December 10, 2001

To: The Honorable Chair and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator *[Signature]*

Re: Conservation Easements

I. Background

Conservation easements are becoming an important mechanism in Pima County for dealing with matters such as the establishment of mitigation banks and the negotiation of conservation commitments with federal environmental regulatory agencies. This tool will also assist in the implementation of the Ranch Conservation Element of the Sonoran Desert Conservation Plan. On August 18, 2001, Pima County hosted a workshop on conservation easements as part of the Sonoran Desert Conservation Plan's Conservation Tools Workshop series. The verbatim proceedings from this workshop are attached for your information. A number of speakers who have had direct experience with conservation easements presented information about conservation easements, discussed their experiences, and answered questions from the audience. The workshop was open to the public and was well attended by rural property owners and ranchers.

II. Conservation Easements Defined

Ms. Laura Hubbard of The Nature Conservancy spoke first and described the legal, tax, and financial aspects of conservation easements. Ms. Hubbard conveyed that conservation easements are an effective tool for allowing the owners of the land to continue to use the land while adding conservation value.

III. Land Trusts

Ms. Diana Freshwater, Executive Director of the Arizona Open Land Trust, discussed land trusts, their history, how they operate, and the advantages to working with them. First established in the 1840s, there are now approximately 1,200 land trusts across the nation, including 18 in Arizona. Trusts protect about 17 million acres of land. While some land trusts hold easements, others provide advice and assistance to land owners.

III. Conservation Easements and the Value of Private Property Rights

The landowner perspective was provided by ranchers from the San Raphael Ranch and Malpai Boarderlands Group. Mr. Sharp described his decision to sell an easement on the San Raphael Ranch in Southern Arizona. When looking at conservation easements, he emphasizes that the focus should be on the ecological, economic and social aspects. Mr. Sharp cited the benefits of his decision to sell the easement as (1) protecting the natural resources of the valley and (2) securing land tenure and land usage. Mr. Bill Miller of the Malpai Group provides a wealth of personal experience. Mr. Reese Woodling, a board member of the Malpai group, relates his personal story of deciding to place a conservation easement on his family's ranch in New Mexico.

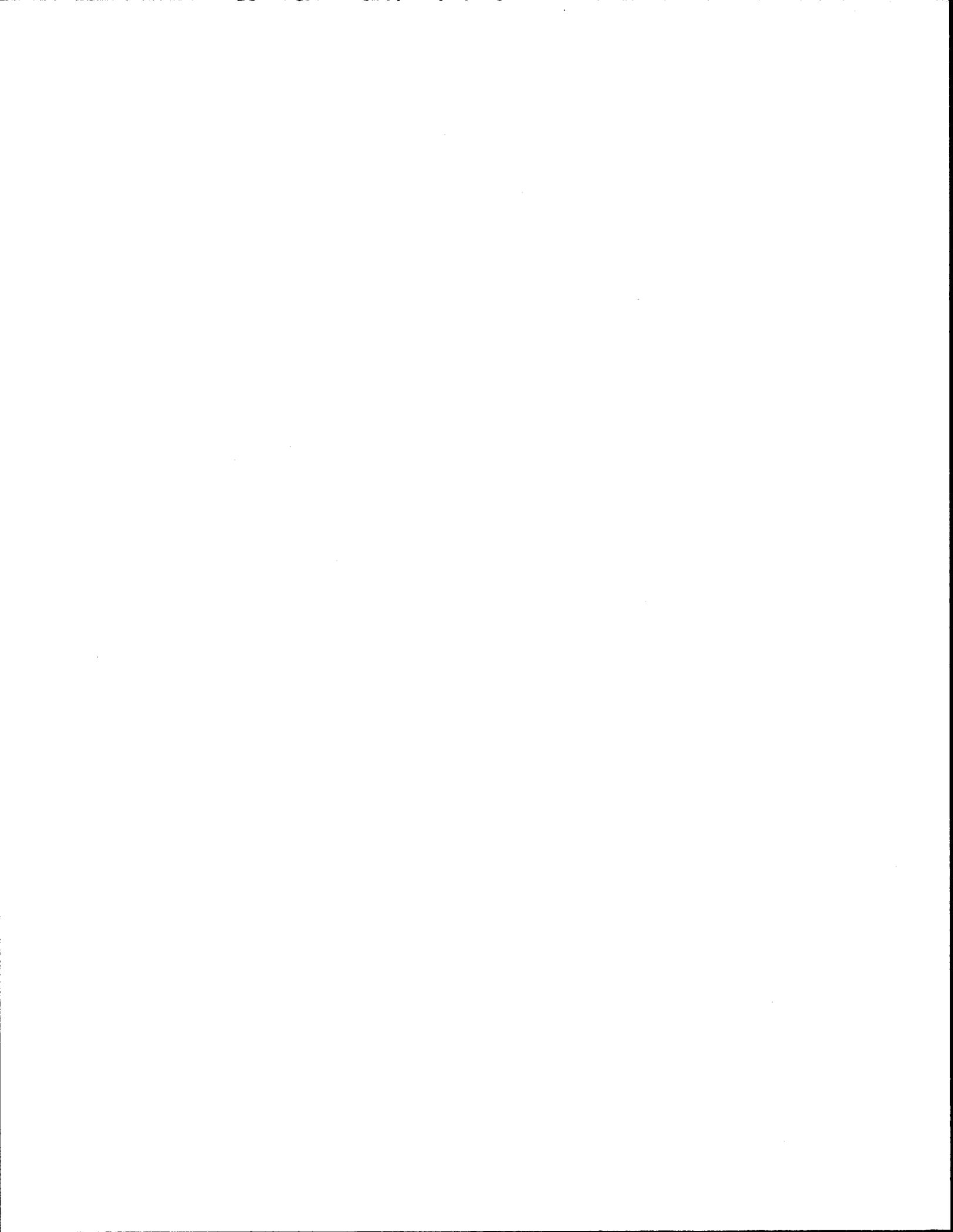
IV. Public Discussion

Following the presentations, the audience asked questions of the panel of speakers. The discussions, often technical in nature, cover topics ranging from tax deductions, mortgages on land with conservation easements, monitoring easements, and the management and permitted use of the land after selling or donating a conservation easement.

V. Conclusion

Workshops on estate tax planning and adaptive management have also been held to support the development of the Ranch Conservation Element. The proceedings of these workshops will be published in the near future.

Attachment



CONSERVATION EASEMENT WORKSHOP AUGUST 18, 2001

I. Speaker 1: Laura Hubbard

Because we have a pretty diverse audience, I think I'll talk generally about what conservation easements are and then I'll go more specifically into how you craft them. I have provided a brief outline on tax incentives of conservation easements as well as a draft example of a conservation easement. I'll probably refer to those, but in general enough terms so that if you don't have it in front of you, you will still be able to follow along.

A General Description of Easements

As a property owner your property consists of what is referred to as a bundle of rights, often described as a bundle of sticks. The bundle of sticks includes your water rights, grazing rights, timber rights, access rights, and rights to subdivide. As a property owner you have all these myriad of rights, whether you own a ranch or a farm or a house. When you donate or sell a conservation easement, you are selling or giving away some of those rights and you are retaining the other rights. A conservation easement is a property transaction and is a legally binding agreement between two parties, the landowner and the holder of the easement. With such rights may retain all your rights except subdivision. Or, you may retain all your rights except subdivision and mining. In my perspective, the wonderful thing about easements is each one is unique. There's not a cookie cutter example. Every property is unique, so every negotiation is unique. You can retain what you need as a landowner, and sell or give away the parts that you feel you are able to relinquish. In many respects, you are in the driver's seat as a landowner.

Typically easements are referred to as negative because they restrict use. It is easier to restrict a use than to mandate a use.

From my perspective, a benefit of donating a conservation easement is that it is a method for owners to continue to use their land and keep the same working landscape, while potentially realizing some tax benefits. Of course if it's sold, it's similar to selling a property in that you may have capital gains taxes to pay. The land is kept in private ownership and on the tax rolls of the county, while still allowing the protection of the conservation values. The Nature Conservancy, is dedicated towards protecting biodiversity so you can realize significant tax benefits. The land is kept in the private landowner's hands and is given conservation value. In my mind, a conservation easement is a very effective tool.

I work with willing landowners and willing buyers. If somebody doesn't want to sell an easement it's okay, we don't even have to argue about it. Some of the typical restrictions include:

- No subdivision of property
- No mining
- No exportation of water
- No introduction of exotic weeds or animals, plants
- No building of excessive roads
- No feedlots or confined feeding

All of these all can be tailored to each property. Typically, the more restrictive the easement, meaning the more rights that you sell or give away, the more value the easement will have. As you strip away these values from your property, what you retain actually reduces in value. I'm talking about dollar value and I'll talk more specifically about that later. But keep in mind that as you sell or give away some of your rights in an easement, the rights you retain are worth less and the rights you sell or donate are worth more. The more restrictions there are, the more the easement will be worth.

Tax Implications

Let me talk a little bit about the tax implications of donating an easement and then we'll talk about actually putting an easement in place and what's required to qualify for a tax deduction.

Essentially, if you were to donate a conservation easement to a qualified organization like Nature Conservancy, you would get a tax deduction just as if you were to donate one hundred dollars to the United Way. For example, if you have a million dollar piece of property and you donate an easement that is valued at 50%, you can get tax deductions for \$500,000.00. Also, you don't have to use that tax deduction up in one year. It can be spread out over five years, at 30% of your adjusted gross income every year with a five year carry forward.

Another advantage is that it potentially, once you give away this conservation easement, your property value for the State Assessor is lowered and the Arizona Department of Revenue states that your property be considered for a reduction in county taxes. Of course, the landowner must make the County aware of the need to lower the properties value. The tough part here is that typically the lands we are working on are already in agricultural status, which is a very low tax status, so having a conservation easement on land that's already in agricultural status isn't going to lower the county taxes. And additionally, you can apply to the Arizona Department of Revenue to lower your state and county taxes for lands that have conservation easements on them that aren't already in Agricultural status.

There are several aspects to qualifying for an easement. Under the Federal Income Tax Law, the donation of a conservation easement is a tax deductible, charitable gift provided that it is donated in perpetuity, that it is exclusively for conservation purposes, and that it's donated to a qualified organization or public agency. We'll talk about each in turn.

Donated in Perpetuity – To donate an easement, the landowner has to have donated intent. To the IRS, this means that there is no quid pro quo. That is, the person who donates it doesn't receive any benefits in return. For example, if to get subdivision approval the developer of the subdivision or the landowner was required to donate an easement, they wouldn't get a charitable deduction on that, and therefore there is no donative intent. If an easement was required to get a Clean Air Permit, you wouldn't get that charitable deduction so you need donated intent, which shows that you don't get any benefits in return.

Qualified Conservation Interest – You would need to own a qualified real property interest and donate it to a qualified charity exclusively for conservation purposes. Typically, you must own the whole property, but there are exceptions. For instance, somebody could donate a remainder interest, where they just have a life estate and they donate part of it.

The qualified organization can be a public charity or a government agency. For example, a qualified organization could be State Parks as well as State Game and Fish. The Nature Conservancy also holds conservation easements, along with public charities and government agencies, so long as those entities have a commitment to protect the conservation values and the purposes of the donation. In addition, the entity must also have the resources to protect the easements and to continue to monitor them. Finally, if the qualified organization ever assigns the interest, that property has to go to a similar qualified conservation organization agency or non-profit.

Conservation Purposes – First, I want to tell you about the four acceptable conservation purposes. One of them is called public outdoor recreation or education. This is where the property is substantially and regularly used by the public. Not many landowners chose this purpose because to qualify you need to give public access and frankly, I don't know many landowners that want to have the public on their property.

The second one, which is what the Nature Conservancy is more interested in, is protection of significant and relatively natural habitat. This also includes buffer zones around these properties. To qualify for this purpose you don't need to give public access. So as a landowner you can donate this easement and it remains your land in your control except for the few things that you have given away in the easement.

The third one is for open space, which can include farmland. Visual access by the public is sufficient, so you don't need to give public access. The public can generally drive by and see this open space.

And then the fourth conservation purpose, which the Nature Conservancy really doesn't deal with, is historic preservation. We've all heard of buildings that are under historic preservation status and again for this purpose, one does not need to give public access. Visual access is sufficient.

So the only purpose that really requires public access is the one for public outdoor recreation, which we don't deal with very much. The buffer zones and significant natural habitat is the main purpose that we deal with, as well as the open space.

Ensuring Perpetuity

The government or the country as a whole has made a decision that conservation easements are a worthwhile public policy and as an incentive to encourage conservation easements we've decided that we'll provide tax incentives. If somebody is going to get a tax incentive for giving a conservation easement we want to ensure that it is protected forever. It doesn't make much sense to give somebody a tax benefit if in five years they get to reclaim their property interests. So to ensure that the conservation easement is in perpetuity it has to be enforceable under state law. The example I have states that it will be enforced in the courts. The rights of others cannot defeat the conservation easement. What that means is that if you have property that is subject to a mortgage, the mortgage has to be subordinated to the conservation easement. This is one of the harder parts of doing conservation easements. The folks holding the mortgages don't really understand it, and as a result they don't want to lend money on property with conservation easements. I think that as we get more easements, they will get more comfortable with them but right now if there are properties with a mortgage, the person wanting to give the conservation easement must contact the mortgage company and convince them that is worthwhile doing. In any event, to ensure perpetuity the mortgage must be subordinated to the conservation easement.

Perpetuity and Mining and Mineral Interests – Another issue that we run into in the west all the time is mining interests. Typically one of those bundle of rights that you have with your land is mineral rights. Although, as we all know in the west in the large landscapes the mineral interests have often been severed or reserved by someone else. When the property owner doesn't retain the mineral interests there's a risk that once you've given the easement away to protect the biological diversity or conservation values someone else who owns the mineral rights could come along at a later date and start mining, which essentially defeats the purposes of the easement. To avoid this situation, the owner has to do one of three things to still qualify under the IRS: (1) they have to get a written agreement from the owner of the mineral rights that says they will not come in and mine and they won't disturb the values of the easement, or (2) they could acquire the mineral rights back into their ownership, or (3) and this is the more likely scenario, the owner retains a geologist to draft a report or a letter stating the possibility of mining is so remote as to be negligible.

Perpetuity and Easement Documentation Report – Typically the landowner retains some rights after donating a conservation easement. They could retain the right to continue grazing, retain the right to maintain roads, retain the right to reconstruct buildings, or retain the right to cut timber. In this situation where a landowner retains rights, which is basically all the time, we need to have what is called an Easement Documentation Report to ensure that the easement is protected in perpetuity. The Easement Documentation Report essentially sets up a baseline. The landowner and the entity holding the easement go out and take pictures, draw maps, and describe how the property is at the time of doing the easement. This is essentially to ensure that as the landowner exercises their reserved rights they don't destroy the purposes of the conservation easement. The Easement Documentation Report again goes to ensuring that the easement is enforced in perpetuity.

This language needs to be included and you will see it in the example of the easement I left. For instance, before the landowner starts timbering some of their property, they send a notice to the holder of the conservation easement that says, "We're going to timber, we're going to do it in terms that are agreed to in the conservation easement, and we're giving you notice." This allows the entity holding the easement to then come out and observe the actions of the land owner to ensure that the conservation easement values are still protected.

Additionally, amendments to conservation easements are strictly enforced and the only way the amendment is going to occur is if it's more strict. It is not going to release some of those previously given away rights.

Value of the Easement

Now once the perpetuity is in place, you will need to know the value of the easement. There's really two methods: the before and after test. You want to find out what you've just given away in terms of a dollar value and you want to find out what your tax implications may be from a dollar value. You'll need to hire an appraiser to do this and there's a couple of ways they appraise the value. Right now, appraisers are having a difficult time doing this, but as we get more easements in place we'll have more of a comparable market to see what the actual value is. What I mean by this is that if you have a house in town and you want to know the value, you look at comparables around your neighborhood. There are not enough easements right now to have a very large list of comparables. The typical method is then the before and after test. An appraiser would look at the property before you put the easement on it, and they will look at what it's highest and best use is. Then the appraiser will look at the value of the property with the restrictions in place. By doing that, you can come up with the value of the easement.

For example, if you have a million dollar piece of property and you give away subdivision, mining, a certain amount of road building, or maybe water exportation, and those rights were worth \$500,000.00, the value of the easement that you have just sold or just given away is \$500,000.00.

The significance of this is that the property owner who donates an easement has a responsibility for substantiating that to the IRS to claim that tax deduction. Therefore the property owner is required to have this appraisal done, and it has to happen within 60 days prior or anytime before taxes are filed. The taxes are filed with a Form 8283. They can't have an employee or a family member come up with that appraisal it has to be a qualified objective appraiser and then they can claim that tax deduction.

One thing I failed to mention when I was still talking about perpetuity is that one of the obligations of the holder of the easement, such as the Nature Conservancy or State Parks or whoever holds it is that they have a responsibility to monitor and enforce the easement. And that means they have to have the resources and the commitment. But they also need to come out and look at the property at least once a year to ensure that the terms of the easement haven't been violated. AN entity like the Nature Conservancy won't just show up randomly on the doorstep of the landowner, it's a cooperative undertaking where we've called the landowner and then we tour the property. In many ways, a conservation easement is like a marriage between the landowner and the entity they give it to. You need to negotiate in good faith and understand the implications. This is a serious legally binding relationship, so you need to ensure that you are comfortable with the level of monitoring and enforcement and the rights that you have potentially given away.

Does anybody have any questions so far?

QUESTION: (inaudible)

Yes, you have to have a donative intent. That is, you can't be required by the county to donate so much open space in order to get your zoning variance for a subdivision. That's not really a donation, you are being required.

QUESTION: (inaudible)

No, not if you are required to donate it. You don't have donative intent. It's part of the regulatory process and you won't get a tax deduction.

QUESTION: (inaudible)

In terms of the value of the easement, you won't get a tax deduction for the value of that easement. Does that make sense?

QUESTION: (inaudible)

I don't deal with that but if you came to me and said, "I want to donate an easement to you because I'm required to by the county or something," my response to you would be, "Well, we would probably accept that easement but on our books it's not going to count as a donation because you are required."

QUESTION: (inaudible)

I can't speak to that. In my knowledge I don't think it is but if you are saying you've done it and it is, then hallelujah.

QUESTION: I have a quick question, you said the owner can get a geologist and see if the mineral rights are not very valuable?

What they say is that the possibility of mining on this property is so remote as to be negligible.

AUDIENCE It must be true though because the geologist will do that.

QUESTION: Well what if it isn't then, then there's no easement?

No, that's language right out of the IRS Code. The code says that it has to be so remote as to be negligible. If you have a qualified geologist that you've paid and who has the knowledge and the skills and IRS accepts that letter, then the IRS has already qualified that tax deduction and it'll be fine if in 10 years somebody comes up with some crazy idea to go ahead and mine. It is a risk though. It's a huge risk when mineral rights are removed from the land and it's a risk that the entity that's holding the easement also evaluates. Frankly, the Nature Conservancy doesn't want to take property where the mineral rights are removed for that very reason. Sometimes we have, but that's so remote as to be negligible, is language right out of the IRS Code.

AUDIENCE: But they can't do it if (inaudible)

Yes it won't qualify as a tax deduction. An entity could still take an easement, but the landowner may not get the tax deduction.

AUDIENCE: And it's a risk.

Yes, a huge risk.

AUDIENCE: If a private landowner gives an easement to the Nature Conservancy and he has not restricted public access to his land, can the Nature Conservancy then come in after having taken that public subsidy and close off that land from public access when it wasn't closed off before?

I'm not sure I follow. All the Nature Conservancy can do is whatever is called out in the easement. The Nature Conservancy is just enforcing and monitoring a small part of the property owner's rights. For instance, if the public is coming in and cutting down all the trees, then certainly the values of the conservation easement are impacted and the Nature Conservancy would then go to the landowner, not the public and say, "Hey, this is defeating the purposes of the easement and we have the rights to enforce this easement." But in general, if the landowner wants to have the public come across their land and it's not impacting the values of the easement, then it's not the Nature Conservancy's right to close that off.

AUDIENCE: Well, if there are birds and other things that you would like to protect, then you (Nature Conservancy) may want to close it off regardless of what the landowner wants or has planned.

The Nature Conservancy can only do what is in the easement. We can't expand beyond that and the easement isn't going to say that the Nature Conservancy has the right to ensure that there is 82 birds on the property. The landowner is only giving or selling certain specific parts and the landowner has control at the beginning to say what those are and aren't and it should be called out explicitly.

AUDIENCE: Would the Nature Conservancy refuse to take a donation that required public access in a place where you think it should be closed off?

It could. I haven't run into that situation but certainly I've been approached to take certain easements in places that we just don't think we can accomplish our conservation mission and so we haven't taken easements there. Like I said, it's a very important sort of relationship. The landowner needs to recognize what they are giving away and what they are keeping, and the entity holding it has to recognize what it is they have because they are now obligated to ensure it's protection forever.

AUDIENCE: Well, I'm sort of bringing in a fourth interest. We've got the government, we've got the Nature Conservancy, we've got the owner but you have to get (inaudible) public. Does the public have any fundamental rights to access?

No, because it's private property.

AUDIENCE: But it's public funds.

Well, it's public funds in that they are getting a tax deduction and the IRS and Congress made a decision to encourage protection of private land. One incentive is to provide this tax deduction. If one of the purposes of the easement is public recreation, then yes, public access is required. But otherwise, we're trying to take just a limited amount to ensure conservation, not to ensure that the whole public has access to this private person's property.

AUDIENCE: You said you stay away from those kind of deals.

No, it's not as though we would stay away, I just haven't run into it. What we want to do is be realistic. What can we achieve here? What is it that the landowner wants to achieve? That's the first thing I want to know. What is it that the landowner wants to achieve and then is it possible to work with the Nature Conservancy to achieve that? Are those goals we can undertake and can we protect them? If it is, then we'll move forward to try to negotiate the terms.

AUDIENCE: Are there any theories of the public to support (inaudible)

No, this is a private transaction. Like if I came to you to buy your house or I wanted to buy your backyard. It's a private transaction between you and I.

AUDIENCE: That has nothing to do with the public. What you are doing does have to do with the public.

No it doesn't. I am buying something or getting it donated to me as a public, non-profit charity.

AUDIENCE: (inaudible) public access (inaudible)

Yes and if the State Parks or Game and Fish is negotiating the easement, that's typically what they require. They are using state dollars to buy it and they're holding the easement, so there's commission meetings and public meetings.

AUDIENCE: (Inaudible)

No, that's the public's land, so there is no rights to sell on that. There's no rights to give away from the private property perspective and that public land is open to the public.

AUDIENCE: Is there any mechanism for leasing conservation easements for 20 year leases or something like that?

Yes, it can be done. But there's not a tax benefit then because you are paying for the lease and then in 20 or 30 years you would have to re-evaluate it. Typically, that's not something the Nature Conservancy would do because we're not ensuring protection beyond our working life. Therefore I'm mostly talking about donations forever.

AUDIENCE: (inaudible)

I think you hit the nail on the head. It's a huge problem right now that the bank's aren't recognizing that there is still value and they don't understand how easements work and that is exactly why you have to be so up-front and understand what the landowners goals are. If the banks find that in the future we may need to take a mortgage out again, then that's a huge stumbling block that we may not be able to overcome. I would imagine that in the future as we get more easements in place, banks will recognize that these still leave value in the ground that can be mortgaged and foreclosed on. But that's not realized yet.

The Taxpayer Relief Act of 1997

This law provides some incentive to put easements on land. If somebody has been owning land for at least three years before they died and they died, the executor can elect to put an easement on that land before the estate is closed out. What that will do is reduce the value of the estate by up to 40%, therefore reducing the estate taxes. This is a really important incentive, since we have landowners that are getting older and are to start thinking about the values of putting easements on in terms of reducing the estate and giving it to the next generation. But again, it raises the issue of whether the next generation is going to need mortgages and what the banks will do?

I would close by just saying that folks ought to look carefully at the most recent amendments to the Tax Code and how that affects estate planning in reducing the value of the estate. You would have to weigh selling the land to pay the estate tax against getting an easement on it and perhaps wrestling with the mortgage later. There are some significant tax implications to conservation easements and it depends on the landowners specific standing, with respect to the land and money, whether they can afford to do this or not.

II. Speaker 2: Diana Freshwater

LINDA MAYRO: Our next speaker is Diana Freshwater. Diana joined the Arizona Open Land Trust as executive director in 1999. Prior to joining the Arizona Open Land Trust, she was a land planning consultant in private practice, both with her own firm and as a principal with the Planning Center here in Tucson. They worked in California, Arizona and New Mexico. In 1990, Ms. Freshwater was appointed by the governor to serve on the executive board of the Arizona Geographic Information Council. She received a bachelor's degree in landscape architecture from the University of Arizona in 1982, and has lived in Tucson since 1978.

DIANA BARNES FRESHWATER: As Laura mentioned, one of the major components of putting a conservation easement on your land, is inviting another party to come onto your property once a year to monitor it. So what I wanted to talk about briefly today is what land trusts are, how they were formed originally, how they operate and what the advantages are to working with them. I also have overheads on the Colorado Cattlemen's Agricultural Land Trust Easement.

History of Land Trusts

The history of land trusts is sort of interesting. I, being a Westerner, thought they were established maybe 50 or 60 years ago. It turns out that actually in the 1840's land trusts were established in the east and they were called Village Improvement Societies. As with all land trusts these were people who were worried about development in their village, worried about the loss of forests or natural resources and so they were trying to make efforts to protect the resource. Then about 50 years later an organization called The Trustees of Reservations was formed around Boston. They are now over 100 years old and they have now 21,000 acres that they own and manage and 12,000 acres that they hold easements on.

The growth of land trusts moved along slowly. Until 1950, there were about 40 land trusts across the United States and in U.S. Territories. As of 2000, the Land Trust Alliance shows 1,200 land trusts working in the United States. So there's been this amazing explosion of mostly local land trusts that want to do protection in their region or in their community. There are also about 14 national land trusts that are working in the United States. There are 137 land trusts in Massachusetts, followed by 119 in California.

There are actually 18 now in Arizona. The Arizona Open Land Trust was established in 1978 and we were the first land trust. The Land Trust Alliance, which is an organization that was established in the last few years just to help land trusts be more professional, shows that there are 18 land trusts operating in Arizona. Across the country, the local land trusts are protecting about four million acres and the national organizations are protecting about 13 million acres. So there's quite a lot of protection already in place.

The Organization of Land Trusts

Land trusts are 501c3 organizations established for conservation purposes. They usually have a fairly small staff like our organization. We have an executive director, that's me, and that's it. As they grow they usually get a development director or protection manager and what makes them interesting is that they draw on so many resources from the community. For example, they draw from people who have a vested interest in the protection of the community and they get these people to sit on their board and provide volunteer services.

For example, on our board, we have all sorts of individuals you wouldn't expect necessarily to be in the same room, working on the same project. We have real estate attorneys, we have developers, we have environmentalists, biologists, and archaeologists, and it's a really great way to bring together a variety of skills. Those people also tend to know other people in the community, so we often know the landowner that is approaching us for a conservation purpose. When you are talking about monitoring, trust and respect is a huge issue.

Something else I want to say is some land trusts, like the Trust for Public Lands, are not truly a land trust but they come in and help organizations and communities identify open space, plan issues, and put together bonds for public finance. Some land trusts just do protection, while some land trusts just provide landowner advice. Their ability to work with other organizations and other larger organizations is really important because they really don't have a lot of financial resources. So if you can partner up with someone like the Conservation Bonds to bring some dollars into a project and maybe buy something on time so that an agency in four or five years can come back and buy the project, using financing mechanisms, that's an excellent way for large pieces of property to be protected.

How Land Trust Filter Requests

I pulled about six land trusts and I just wanted to tell you a little about how they go through filtering projects. A lot of land trusts are inundated by many requests, many more requests than they can really take on. So what they do to filter out the projects, is they develop some protection goals that are consistent with their organizations mission. I wanted to just read a few of them to you. They are very common to all the land trusts that I looked into.

The first one is to protect lands of vital importance to water, water quality, and water sources and this is throughout the country. Another one is to protect areas of recognized ecological value. Another one is to protect areas with cultural resources or historic preservation values. Think of the National Trust for Historic Preservation for example, or Desert Archaeology which is a group here locally. They also work with Susan's groups and citizens committees to forward protection measures, both for the current situation, as with the Sonoran Desert Conservation Plan or a rather far reaching plan, maybe looking up as much as 100 years in the future. And lastly, most land trusts promote land stewardship through public education and outreach and technical assistance. That's obviously a big part of what they do is to get their message out and bring information out about tools to people who are interested in conservation.

Then another way that land trusts get out this information is by creating a list of reasons why they won't accept an easement. I wanted to list those because they are sort of interesting and very relevant to what we're doing right now in Pima County. I think as we move forward with the conservation plan, there are going to be a lot of proposals for easements to be held inside of large subdivisions. For example, there might be a 400 acre project with cluster development and the landowner is looking for a land trust to hold the easement. One of the problems with that is that most land trusts look at these situations and they try to decide if the conservation purposes of the easement cannot be served. If so, then the land trust is put in a very awkward position if they accept the easement because they are on the line to monitor and manage the land for the resource. That's a huge issue that most land trusts have to deal with on a fairly regular basis. They also look to see if adjacent properties are going to be developed in such a way that will diminish the resource value of the property that they might hold the easement on, even if there isn't any development on that property.

One thing that is becoming more and more important in listening to the comments on a land trust listserv nationwide is the issue of an endowment. I would say in the last six months the discussions on this issue have grown by 100%. It's a ticklish part of the communications between the landowner and the land trust because here you have people who are probably donating a conservation easement, they are giving up rights, they are inviting somebody, a stranger, to be on their property at least once a year. In addition to that, the land trust needs an endowment and the endowment pays for the staff to come out and monitor the property in perpetuity. What most land trusts have done is pullout a spread sheet, include mileage and some salary evaluations, but they leave out the stuff that you don't expect like the wildcat dumping, fence repair, and fence replacement. Some of these things really add up. And these costs are projected forever and they are meant to sustain the management in light of inflation and in light of potential earnings on the endowment. So if a landowner isn't willing to give an endowment, most land trusts will walk away. And if the landowner is willing, then there's the even more difficult part of getting an amount that is digestible to the landowner and the numbers are big. It's a daunting task.

Advantages of Working with Land Trusts

I wanted to just briefly tell you what most people think are the advantages to working with land trusts. What we have found in working with Pima County is that some landowners don't want to work with an agency for one reason or another and that a land trust can be more creative and more flexible. We have two longtime developer/real estate people on our boards. It seems like they know almost everybody in town and they have done all sorts of transactions. As a result, we can bring a lot of expertise and a lot of creativity to the acquisition process and that's really a benefit.

As Laura mentioned, there are obviously the tax benefits of working with a 501c3. Also, for us having a non-profit status is really helpful for our fund-raising. Oftentimes, local land trusts have the trust and the respect of the landowners and that's really helpful because sometimes there are other options or agencies or national organizations and they just feel a little more comfortable with somebody who is local.

Questions

AUDIENCE: When the land trust demands that the owner build fences, who pays for that for example?

The landowner.

AUDIENCE: Is that part of the easement price then?

It's part of the endowment and the landowner buys an endowment and then it also includes replacement costs.

AUDIENCE: Would that be part of the easement cost of that tax benefit to increase then to the landowner then or not?

It depends on whether or not the expenses occur as part of the endowment or the tax donation, the IRS. I think it would probably qualify as a donation, a tax donation to the organization.

QUESTION: You know the costs that the land trust or the easement or whatever else is demanded of the landowner, would that be part of the tax incentive then?

I think it could be, yes.

QUESTION: When you say the rancher won't have feedlots, is there a definition for what constitutes a feedlot? Would that be considered a feedlot?

Each one is different. But in this one they are talking about a commercial feedlot.

AUDIENCE: Is the trust part of the land taxed?

Is the trust part of the land taxed?

AUDIENCE: Yes.

No. Well, the property taxes remain because you are stripping off in many cases, your development rights but the landowner who has donated will still pay property taxes.

AUDIENCE: For that farm?

Yes.

AUDIENCE: If say the owner's children inherit and they decide to do something else, they can then? They have to do exactly what their parents were doing? Is that what it means? Existing uses you are saying?

Well, yes and no. Existing uses and reserved rights, so if in the future the current landowner decides I'd like for my children to be able to go out and they do plan for that at the outset. But if it's not in the plan, it might not be an existing use. And also these can be amended, both parts can be amended so it's not really closed.

AUDIENCE: Are there any grants for endowments? Are there any funds for endowments?

AUDIENCE: I don't know if you can answer this but you know, 20 years ago I wouldn't go in for laser surgery on my eyes because the technology was so new?

All I know is that from 1950 to 2000, suddenly we went from 40 to 1200 land trusts. But as far as breaking that down further, I don't know. I know that in the last 20 years the growth has been tremendous and one of the things that I think that's happened is a lot of land trusts wanted to protect a piece of property, but they didn't think about the monitoring. A lot of agencies and a lot of organizations are having to fund raise on an annual basis to take care of their properties and it's an extremely draining process. It takes a lot of volunteer time and there's a tremendous amount of time to coordinate it all too. So, it's like a business.

AUDIENCE: You say that an easement might be abandoned by mutual consent, what are the tax ramifications?

That's the second time that question's been asked.

AUDIENCE: I did not understand the tax ramifications.

I haven't answered it because I'm going to ask Laura Hubbard to answer it if she gets a chance before she leaves.

LAURA HUBBARD

Yes.

MS. FRESHWATER

In this easement that I was going over, there's a provision for termination of the easement, whether it's a combination or if the conservation purposes of the easement are no longer being served so the question is, what are the tax ramifications if it's extinguished?

MS. HUBBARD

Well, that's a good question. First off, you have to extinguish the need for judicial proceedings. So you are going to court and it would be like condemnation. Let's go back to my example. A one million dollar piece of property, put an easement on it that's worth 50% of that, okay? So it's worth \$500,000.00. In the easement, there is language and you can see in my example that says, "This easement is worth 50% of the property." Fifty percent is now owned by the Nature Conservancy. This says, "should this place be condemned or extinguished and the property sold as a result, those proceeds would be divided equally, "or not equally but according to percentage. So you may have an easement that's only worth 20% and the easement will call out this percentage as 20%. If it's extinguished in a court proceeding, there is condemnation and the property is sold and the purposes are defeated, then that 20% value would go to the Nature Conservancy and that impacts the taxes. I don't have any examples of that occurring. It may occur in the near future. There would be a portioning of the proceeds. Does that answer it?

AUDIENCE: No.

AUDIENCE: So what Laura said was incorrect because Laura just said when it was terminated, the property reverts back to the original owner and right now she is saying it was the court and then its sold.

MS. HUBBARD

I was talking about if the two parties decided the conservation purposes of the easement are no longer served

AUDIENCE: It would terminate but even if it is terminated they still have to go to court and then it's sold.

MS. HUBBARD: Extinguishment has to occur at a judicial proceeding.

AUDIENCE: Right, and if it's sold the he owner may not get it back.

MS. HUBBARD

No, it doesn't have to be sold. It's not a forced sale, but it calls out that exact sort of thing. For instance, if you get condemned then the government entity has to pay you. It's a taking essentially and they are going to pay you and the money that they pay you will be a portion for the conservation purposes as well as the underlying fee. We don't have an example of it yet, I would hope that it wouldn't occur.

AUDIENCE: I'm not speaking of condemnation, according to my understanding you said that by mutual consent the easement could be extinguished, not judicial concepts but by mutual consent of the parties. In the event that occurs, whatever benefit is derived by the property owner in the original donation becomes convertible back to that original grantor or successor and that becomes an added value to the grantor or successor. If that's the case that much value becomes no longer a donation.

MS. HUBBARD

That's right and I think there would be a huge IRS issue then.

That's an issue I haven't addressed yet and I can't see it happening. I don't know when we would have a mutual extinguishment. If the IRS is signing off then it qualifies as a donation. I think the landowner and the land trust if they were to do a mutual extinguishment at some level is going to have some major issues with the IRS in terms of who is covering that tax deduction that was taken some years ago. I think the point to remember is when you enter an easement you ought to think about it as forever. This is a legally binding document that's not coming back to you, it's recorded on your title and it's not going to get extinguished and I think that's the way you have to enter it.

AUDIENCE: What if the entity defaults? Now, it's not just the owner that would be at fault but the conservancy and the owner should certainly have some ability to answer this.

MS. HUBBARD

Well, that's where the easement to qualify must go to a qualified entity or organization. So if it goes to Game and Fish you can make the assumption that they are not going to go belly up. If you come to the Nature Conservancy we have qualified as not going belly up. In addition, we have what I think you must have been talking about, endowments to ensure that it's monitored in perpetuity. If the Nature Conservancy fell into evil hands or went belly up, that endowment is still unquestionable and the next entity to supersede the Nature Conservancy would get the endowment to ensure perpetual enforcement and monitoring

AUDIENCE: Does the owner have any recourse?

MS. HUBBARD

No, that's what our courts are for I imagine.

AUDIENCE: More expense.

III. Speaker 3: Bob Sharp

LINDA MAYRO: Bob Sharp has been involved in ranching all of his life until about two years ago. His family owned the historic San Rafael Ranch in Southern Arizona at the headwaters of the Santa Cruz River. He is currently an independent consultant working with landowners on property rights and conservation issues.

BOB SHARP: Over break I was talking with a couple of people and we came to the consensus that we're dealing with a rather complicated topic. The easements themselves and the documents are rather straightforward, and what we heard from Laura and Diana is rather straightforward, the legal aspects, but there is some implications about conservation easements that are far-reaching and they are not necessarily a simple matter. I'm pleased to make some comments about them as a landowner who has had direct experience and I'd like to give you a little bit of my background first.

At the turn of the century my grandfather founded the copper mine down in Cananea, Sonora, Mexico. He and his successor, acquired lands in Northern Sonora and Northern and Southern Arizona and up in California. And as a kid I spent a lot of my early days going around from these different ranches, learning about how ranching is done and the different ways it's done in different areas throughout these landscapes.

What's happened to these lands?

The Cananea Ranch, which was between 800 and 900,000 acres in 1958 was confiscated by the Mexican Government. A company that was totally private had been turned over for communal lands down in Mexico. There was one good thing about this and that was that it was a decision made by the Mexican Government that was completely above board. They stated exactly what they wanted and they went ahead and did it. Here in this country the process of confiscation is a little bit more sinister, possibly occurring under the guise of state taxes, and to a far lesser degree, the Endangered Species Act.

The ranch in California, the Merced Ranch, the pasture lands there have all been subdivided. Part of the Palominas down on the San Pedro now belongs to the BLM, the Baca up in Seligman was sold in the early 70's and now consists of the mixed tenure system of private and public lands. Finally, the San Raphael down in the southern part of Arizona was liquidated in 1998. Prior to that sale we spent six years trying to come up with alternatives to prevent that sale and during that time, we examined conservation easements extremely closely. We finally decided upon placing an easement on the land and selling the development rights to the Arizona State Parks. When I look back, I realize that most of these lands represent the entire spectrum of land tenure. They illustrate that land and property can be held in two ways: publicly, communally, publicly or communally, and privately, and this is a never ending sense of controversy because both of these two systems have their pros and cons. Most of my experience in my life is with private property and therefore, I lean in that direction. However, here in Arizona I find that I am a minority since 87% of the lands here in the State of Arizona are publicly owned. With this background in mind, I'd like to discuss three topics and how they relate to conservation easements. They involve observations I've made over the past several weeks since Linda asked me if I would give a brief talk on this subject.

First is sustainable ranching, the second is a photography exhibit at the Center for Creative Photography here at the University of Arizona and the third is several examples of private property as it occurs around the world.



Sustainable Ranching

Recently I've had the pleasure of working with a small core group of people under the guidance of the Udall Center examining sustainable ranching. Even though we've been talking about this for close to eight months, we really still haven't come up with a definition of it. So whether we're getting anywhere I don't know, but we have decided on one key thing and that is that the definition of sustainable ranching will revolve around three concepts or three systems: (1) the ecological and environmental point of view, (2) the economic point of view, and (3) the social human values.

In other words, for a ranch to qualify as sustainable, the ranch operation should protect the environment, it should be economically viable, and it should perpetuate certain social values for the individual and the community at large. So just for kicks I applied those same three principles to the Sonoran Desert Conservation Plan, a process that I fully support. Up to this point in time, the plan has been weighted heavily on the ecological side, with the Endangered Species Act and the protection of 56 species being the driving force behind the plan. Meanwhile, the economic and social components have not been addressed as thoroughly, but I understand that they are coming along and will be right behind, it's just a matter of having some patience before we get to those issues.

What happens when we look at conservation easements using these three same criteria of ecological, economic and social values?

From the ecological standpoint, they do quite well, they prevent land from being subdivided and when that decision to subdivide land is made, it is essentially an irreversible decision. Economically, they solve a problem. Socially, however, they don't fare quite as well.

Center for Creative Photography

There is something a little disturbing about conservation easements and I haven't been able to put my finger on it until a recent visit to the Center for Creative Photography at the University of Arizona. There's an exhibition there that is called "Indivisible" and it's outstanding. It deals with several communities, 12 communities throughout the United States, and it points out what makes a working democracy succeed. It's based on diversity, independence and the balance between individual and community responsibility.

Each of these communities, each of the 12 communities, are represented photographically, there are also tapes, oral histories, on the community members and there are postcards representing each of these communities. There is a postcard devoted to Sitka, Alaska, and on this card there is an excellent description of the occupation of fishing and I'd like to read this description to you.

"Commercial fishing really brings up the whole subject of risk and how people deal with risk. Most people who fish know what the risks are, and walk into it with their eyes wide open. If you analyze what motivates people to do it, one of the greatest motivators is a sense of independence and freedom. They feel like they are in control, even though they are in the riskiest profession in the country and they are out there on the open ocean."

What I'd like to do is substitute ranching for fishing and the land for the ocean, and I think you will have a pretty good idea of what motivates ranchers. Ranching really brings up the whole subject of risk and how people deal with risk.

Most people who fish know what the risks are and walk into it with their eyes wide open. If you analyze what motivates people to do it, one of the greatest motivators is a sense of independence and freedom, they feel like they are in control even though they are in the riskiest profession in the country and they are out there on the land.

Examples of Private Property as it Occurs Around the World

The disturbing aspect of conservation easements is that they diminish this crucial sense of independence, freedom and control. The need for control over one's circumstances is a basic human need. This aspect of ownership is often dismissed and not openly discussed. Anytime you give up control, your creativity and your ability to accomplish things diminish. Pride of ownership runs deep and when this pride is chipped away, the quality of management and the quality of stewardship of your land deteriorates. We need to understand the importance in underlying values of property and property rights. And to help illustrate these values, I'd like to mention four diverse locations: Russia, Hong Kong, Africa and a community in South Chicago called Pilsen. It's very difficult to talk about private property rights without being labeled as an extremist, so I'm trying to take a balance to you but at the same time, it's important that we understand the inherent values in these private property rights.

When you look at the history of Russia and you compare it with some of the other surrounding European countries, the weakest link was a weak development property. It never was formed in Russia, under the Czarist state. No more plainly is the relationship of property or freedom seen than during the reign of the Soviet Union. In the communist manifesto, it is clearly stated the theory of communism may be summed up in a single sentence: "Abolition of private property," and this is what they did in the Soviet Union. It's funny when you look at Stalin and after his collectivization of agriculture, after he initiated that, there were terrible famines that spread across the country and as a result of that, it forced the Soviet Union to rethink their policy and to permit individuals to hold 6/10ths of an acre of land. These small 6/10ths of an acre accounted for 1.5% of the countries cultivated area, but they ultimately provided about one-third of the nations foodstuffs.

Let's look at colonial Hong Kong. According to William McDurn, and editor for *The Wall Street Journal*, after the transfer of colonial Hong Kong back to China, the citizens were ranked among the freest in Asia. It wasn't because of political rights, they didn't have any, all they had were property rights which later transferred into a sphere of banks, institutions and private companies. As a veteran Chinese newsman said of Hong Kong in 1998, "This is the only Chinese Society that for a brief span of 100 years lived through an ideal never realized at any time in the history of Chinese Society."

In the May issue of *Forbes*, Steve Hank, an economist at John Hopkins, states that "The whole world is worried about Africa. The average income per capita is \$315.00. Most of Africa is highly dependent on foreign aid, 80 million African children are working as slaves and the population, as we all know, is riddled with Aids. There is much debate about the root causes of these problems. The one cause that is overlooked by a great majority of people who consider themselves humanitarians is property rights."

In Hank's words, "Without sound property rights, the billions of dollars being jammed up to save Africa promises to be money down the drain. Good feelings and foreign aid will alone, not work. The only cure is to instill the basic concept of ownership in African economies."

What's going on here?

In the Soviet Union there was no pride of ownership. No one took responsibility for the communal lands but each individual who owned a small plot was motivated by the ownership to make it produce. When we compare mainland China to Hong Kong, property rights alone, even without political rights assured a crucial amount of independence, freedom and prosperity. In Africa, there is no secure tenure at all, and without individual control there is no motivation to achieve.

I have one more example to mention and this is a small neighborhood in South side Chicago that I had the opportunity to visit a couple of years ago with my wife, and my sister was friends with a Catholic priest in this community of Pilson. I remembered this several weeks ago because Vicente Fox, President of Mexico, happened to go there to give a speech and this kind of struck me as odd that out of the many communities in the United States, he happened to go to Pilson. And I remember on our visit there, there were several things about Pilson that were really unbelievable and number one was, this priest's name was Father Chuck, Chuck Dom. He went there in 1992, and completely transformed a community which was riddled with drugs and crime and it was just a total disaster and so I asked him how in the hell he was able to do this? How did he transform this community? Well he said number one, most of members of the community were Latinos and as Vicente Fox pointed out, there are 55,000 Latinos. They simply had kind of a community that was, you know, a lot of the same and what Father Chuck did was, he took a hard line against the drug guys and basically, on his own, he just ran them out. And he made a deal with the Mayor of Chicago whereby he would purchase these vacant lots in Pilson for \$1.00 a lot because basically they were of no worth to the City of Chicago. So he purchased them for \$1.00 a lot and then he got community workgroups together and they built these beautiful homes that he sold to members of the community. He initiated what is called "The Resurrection Project," and it created affordable housing throughout the city's new homes for Chicago's program. Once the residents were able to own their homes they also took ownership of their entire community. They transformed it, they protect it and they take great pride in it. And when you drive up and down the community, you will see everybody out there watering their gardens and their vegetable gardens and the flowers and what was once a total disaster has all been changed. This comprehensive approach to home ownership is nowhere more obvious than at the fence line separating Pilson from the rows of the old tenement housing projects.

Conservation Easements and Values

Unfortunately, conservation easements compromise these values. Property rights are often thought of as a bundle of sticks. I tend to think of them as strands in a rope and when you remove one strand, whether it be a water right, a mineral right or a development right, it can never be the same, the rope is weakened and it can never withstand the same amount of tension. In our efforts to guide the growth of any given community the focus is often on conserving the land first, and addressing the needs of the landowner second. Several weeks ago in North Tucson where I now live, Catalina No. Seven, a meeting was held by Pima County to discuss the future of Catalina No. Seven. A young ranch wife was there, her husband stayed at home. He was busy on the tractor so she came into town by herself. She noticed that on the walls one of the maps of Catalina No. Seven, there was the outline of her ranch and her ranch was all covered green meaning that it had certain very important biological values. So she spoke up, she was justifiably concerned.

How do you claim to know the ecological values that exist on our land since it is private and to our knowledge, biological surveys have never been conducted?

To the 99% of the population that is now urban and no longer involved in the production of agriculture, comments like this may appear to be overly sensitive and yet, subtle psychological aspects account for agricultural people to hold on tenaciously to their land. Cultivation of crops or riding horseback over one's land is time consuming, this labor and constant attention causes landowners to develop a very personal relationship with the land. So much so, that over time the land becomes an extension of ones self. What a person is, what he or she does and what he or she owns are all a part of the whole, and assault on one's belongings is an assault on the self. We have to remember that behind every one of these environmental statistics on private land lies a person and a family. If we spend the time and the money to count every endangered species on a given habitat, we can certainly make the effort to pay more attention to these individual landowners.

What are we really looking at here?

We are looking at the relationship between the person and the social organization. In our eagerness to protect the land it is tempting to place the effort above the individual person, and compromise that person to the interest of the movement. When we look at conservation easements, sustainable ranching or the Sonoran Desert Conservation Plan, we need to understand the big picture instead of focusing only on the biocentric view, only on our endangered species, we must attempt to link all three of our systems that I mentioned earlier: ecological, economic and social.

Returning to the San Raphael Valley and the sale of development rights on the San Raphael Ranch in 1998, was that a good thing? From an environmental standpoint, yes, it was a good thing. A beautiful valley was saved, the easement safeguarded, the natural resources of the valley, the headwaters of the Santa Cruz River, the only remaining part that is totally natural has been preserved, a balanced environment continues on. From a social or a human standpoint I think it's doubtful. The concept of private property was diminished, the landowner no longer has total control and has instead, entered into a partnership, and the landowner's freedom has been decreased by several notches. Management was also compromised in that there is an oversight by an agency that has little experience in grazing systems, especially in that unique location.

Having said all that, would I do again what we did in 1998? Considering the issues my family was facing at the time and the limited number of solutions then available, my answer would be yes. The San Raphael is an attractive ecosystem with an identifiable beneficial use: that of cattle grazing. Not only is land tenure secure, but more importantly land usage is secure and this is what makes conservation easements attractive in those areas suitable for agriculture production. Land with easements on them, unlike private fee land has had the threat of subdivisions removed. Land with easements on them, unlike public land have no public access, therefore, not subject to multiple uses. With the right to develop removed, there remains only one use: that of ranching and in that particular area in that location, it's been a proven beneficial use for more than 200 years.

In summary, yes there is a place for conservation easements. When deciding whether or not to place an easement on your land, I can tell you, you will go through a period of absolute maddening indecision. At least here in Arizona, the statute is on the books so each landowner can choose to use easements according to his or her own unique circumstances.

At one time, the lines designating private ownership were much more clearly and widely accepted. Escalating population growth and increased pressure on our natural resources cause us to

continually re-evaluate our land tenure system. Conservation easements have come into play as a tool to protect private land but in so doing, they jeopardize the complete package of private property rights.

As we move into the future, the lines separating difficult issues are no longer black and white but they are shades of gray. We exist in a tug-of-war between the private and the public, a free society and a manic society where property rights are becoming vague. It is important that we don't overlook those values that separate and distinguish our country from others around the world.

IV. Speaker 4: Bill Miller

LINDA MAYRO: Thank you very much Bob. I'd next like to introduce Bill Miller. Bill Miller is the Chair of the Malpais Borderlands Group. He is a founding member of the Malpais Borderlands Group and has served as board member treasurer, co-executive director and currently serves as chairman. Bill has been president of the local water association for ten years and vice president of the Hidalgo County Cattle Growers Association. He has also been appointed by the governor and the New Mexico Supreme Court to serve a two year term in 1997 on the Judicial Performance Commission and he was reappointed in 1999 to serve a second two year term. Bill attended New Mexico State University from 1959 to 1961 and the School of Animal Husbandry in biology and completed further technical education at the University of Texas at El Paso.

BILL MILLER: We've heard quite a bit about conservation easements this morning. The Malpais Borderlands Group holds a number of conservation easements. They differentiate somewhat from what we have talked about here this morning because most of the easements that we deal with are really not the tax code, tax free easements. So there is really two kinds of easements and I really suspect that the property owners, the landowners in here are somewhat more interested in those types of easements than they are donating them. If they are like they us in our area, the ability for individuals to donate easements is just not really there. It's not that beneficial to them. Most of them have indebtedness. Most of them are trying to survive on those lands and of course, we look at it from a totally different aspect as far as the appraisals go. We look at it from the value as a ranch and that we look at is the long term return that you would get out of that if you sold it as a development. So those numbers are different. One question that came up a little earlier, I'll diverge a little bit off of my talk on it, about loans and loan applications for property owners that have conservation easements on their property.

In New Mexico and in Arizona, we early on, the Malpais Borderlands Group, early on asked to have an audience with the lending agencies that might be working locally including local banks, federal land banks, reduction credit and those type of people when we first started negotiating conservation easements. We sat down at the table with 11 different lending agencies and asked them if they would consider subordinating their position to the easement and immediately, those that were interested and had a primary interest in Agricultural lands said, "You bet." It secures us a position in the future. If we're an Agricultural lending agency and you have an easement on there that says you will continue in agricultural business they are more than glad to sit down and talk to you at the table about loaning you money for your operations, including refinancing it to somebody else that is willing to buy your operation in the future with that easement on it.

So, really again, back to the situation about non-tax deductible easements. The Malpais Borderlands Group is a 501c3 non-profit and we consider ourselves somewhat of a land trust organization. We came forward early on and we actually exchanged forage value for conservation easements for livestock to graze during drought periods. In 1996, we were faced with the third year of a drought. We had actually five different ranchers come to us over a period of time, it wasn't all at once to ask if there was anything that we could do to help. Through the Animas Foundation, which is the Gray Ranch that had been under the management and ownership of the Nature Conservancy and was still under that ownership at that time but it was being transferred back into private to the Animas Foundation, we found the availability of forage for livestock grazing. The organization set forth to completely contain these five ranches by allowing them to graze for valued forage for the purpose or for the amount of the appraised conservation easement and I'll go back again. We looked at those ranches and said, "They are worth : X number of dollars as ranches." The conservation easement that we look at is how much would that provide to you as a landowner over a five or ten year period of time, if you sold it to a developer. Some of them have attachments on that, that you will get your money when the property is sold. Some of it is outright purchases. Those outright purchases generally are not increased that much in value.

When we started that, those values were about 20% of fee value, 20% escalated above fee value so that's what we appraised those ranches at. Appraised the ranch and equate them on up to 20%. Those individuals could take their livestock, their livestock numbers, move them onto the Gray Ranch, graze those animals on there for a period of time it took to acquire those conservation easements. Those range from three to five years. Everybody that's participated in that program has walked away from the table very happy. We haven't had anybody that is really disconcerned over what they have done or what they have put together as far as those easements go. There's been some concerns about the values of those easements because at that point they were 20% of the fee, and the easements that we're working on today are running from 40-60% of fee. There's been a substantial escalation and it's just due to the fact they are making no more land. So it's worked out fairly well for us. I really appreciate what Mr. Sharp had to say because his philosophy and my philosophy are very similar in those. You do give up a part of the rope. I'm kind of like Mr. Sharp. My family has been on this ranch now for 91 years ago. My family came into this operation 103 years ago. I guess there is some down sides to this and this may be a little humorous to some, but it's really very factual.

Why shouldn't you put conservation easements on your property?

I guess the number one reason is, you probably don't like your neighbor. If you put it into development and I can speak on this from actual experience, I have development on three sides of my operation. The development has made my operation a whole lot harder to manage. Ours are 40 acre parcels. The high end of it and I really believe when they started the development on that, that they put a covenant on the development: that the mobile home had to be made prior to 1970. It must have been abandoned in place at three times during its life, and if you abandon it now you must leave your dogs. So going back to what I said, if you don't like your neighbors, and if you are in a ranching community, that's a good reason not to put a conservation easement on there. I guess if you are from a radical environmental group, another good reason not to put a conservation easement on a ranch is probably because your contract is going to say that livestock grazing is going to be one of the things that you do. All of the easements that we have, that is a stipulation in it. The traditional livelihood that has gone forward has brought these landscapes forward will continue to be there in the future and one of the traditions that's brought in there is livestock grazing.

I am absolutely positive as I stand here that the open space that we all cherish so much would not be here today without livestock grazing. It's what has kept it here, it's what has paid the taxes, it's what has created the value of ranching on it. Go ahead, clap, I enjoy it.

Another reason that you should not want to put a conservation easement on your property is, is if you don't like wildlife. Be sure and make sure that this 40 acre parcel that is your neighbor that you want to convert your's over into 40 acre parcels too, is able to provide you with a male and a female dog to run everything off. And they also reproduce about twice a year. We've seen it, they've started subdividing in our country in the early '70's, it's not fun. It's not fun to ranch in a subdivision and it's really not fun to be an individual in a subdivision because as a kid growing up there, we didn't worry about the neighbors top dog but in our time and in my time since I've come back to the ranch, about 30 years, not only have I been confronted by dogs that I don't have a clue where they came from but it's always real disconcerting to be building a pasture fence and here comes an Emu. You know, what are you going to do with him? It's not a lot of fun.

The Shelton's over there asked me if I would speak a little bit about the perpetuity and the tax ramifications and where the Malpais' easements go if we have a serious problem and I've heard other people speak in here today about public land ranching and those types of things. Most of the ranches in the Malpais Borderlands region are totally dependent upon either state or some kind of federal land, whether it be USDA Forest Service leases or whether it be Bureau of Land Management Interior leases. They are dependent on it, there's a couple of us that have enough of it that we just really wish we didn't and we'd reduce the size of our property to get rid of it, but it isn't there. We can't do that.

We crafted language into the easements that we put forth for our original and we've had one individual that did not want it put in and he'll follow me and he'll talk too about it. It basically says that if the state or federal land managers and owners do anything to that property which no longer makes your operation a viable livestock operation, that easement will revert back to you. Now you can't do that with a tax exempt easement, it does not meet the IRS Code. Laura will spell that out or will agree with that I'm sure, but it will not meet the IRS Code. If you are not looking for a tax donation, a charitable donation or a tax reduction, there is more language that you can craft into those easements and I don't know what the County will do being that it is tax type money that acquires those easements. But the easements that we have traded for and bought outright through the Malpais organization, none of those monies have come from the federal or state side of it so we've had a lot of latitude. If you are interested in easements, one thing that you must really remember that from the title of that document is that until you sign it, you have a tremendous amount of options. And like Mr. Sharp said, you are giving up one of your rights but the trade-off is, that if you look at it for the next 100 years, did you really give up a right? Without giving up that right, pressure from an individual that may be three or four generations from the future, develops it and takes the option away from your and my children, grandchildren and their children to ever have a livestock operation.

So what do you really give up?

I guess the question would be, you give up the right to develop. In our area, to give you something that will really chill your bones, if you are from the economic situation that I'm in, I don't have much money, but in the development that we've got in our area the developer has so kindly gone out and sold 480 acres to an individual who is in love with wolf dogs. He's built paddocks to where he can contain and I guess at this point, has somewhere between 200 and 400 of those individual dogs.

I say incarcerated within the confines of a pen. They are not wild animals but they are half wild animals. They are not domestic animals because they are half wild animals. They are pack animals. To give an example, in 1959, my family has been in the hunting business for long, long periods of time. In 1959, we captured a female lion that was in an extended state of pregnancy. We put her in a pen and in about three nights after we put her in the pen she gave birth to three kittens. Out of those three kittens, one of them came to Tucson to the Sonoran Desert Museum and the other one we gave to a neighbor that did the same thing that we did, ranched and hunted lions, and we kept the third one. Two of those three cats survived. One of the survivors ended up back at the museum here in Tucson, but what we found is we protected that cat from his own way of life. We fed him, we nurtured him, we took awful good care of him because we didn't want him to be a killer and at the age of seven months we raised Angora goats then. At the age of seven months we got up early one morning to go out and see what Tommy was doing. Tommy had a goat on the front yard that was dead. His mother didn't teach him to kill, and his father didn't teach him to kill, and we didn't teach him to kill. He knew how to do that and that's the same situation that we feel like that we've got with these dogs. They have that survival instinct and if something drastic does come up, now he is only surrounded by a subdivision that's ten acre parcels and there's about 30 families that lives in that, what's the situation? Of course, maybe in your County you've got land use planning that takes care of you, we don't.

I don't have a whole lot more to say, most of the things that have been said here this morning, we have gone through time and time again. I do not have a conservation easement on my property and there's a reason that I don't have a conservation easement on my property. It's not that I don't want a conservation easement on my property, but that I cannot afford to donate a conservation easement. I don't have any debt. If I sold a conservation easement for fair market value, up to 60% of that would go back into the government coffers and I think Mr. Sharp will tell us real clearly that they don't spend our tax money wisely.

I don't feel like Pima County, the Nature Conservancy or the Malpais Borderlands Group needs to be out busting their hump to raise tax money, so I've come up with somewhat of an interesting concept. As I stated earlier on, I'm surrounded on three sides by subdivision so I've talked to several principals within our organization in trying to stay out of the conflict of interest of that, I have asked them to go out somewhere that's contiguous to my property. I don't care which one of those subdivisions it's in, and acquire enough property to exchange to me for my conservation easement. There's what they call a 1031 exchange that the federal government allows you to do. There's no money transactions between the individual and the non-profit, it's all done through in-kind exchanges or exchanges. To me, it's a reasonable thing to do, I don't want to spend my money to send off to the government, I don't want to reduce the value of my ranch so by acquiring more property it increases the value of my ranch, it does not disrupt what's gone in historically in that area because all of those subdivisions around me were either part of our old home property or the neighbor's old home property before times got tough and they had to sell it. So with that said, we're going to have a panel discussion and I'm not going to go into questions and answers at this point, I really appreciate your time, thanks.

V. Speaker 5: Reese Woodling

LINDA MAYRO: Our next speaker is Reese Woodling. Reese is a current board member of the Malpais Borderlands Group, he's a rancher who lives here in Tucson with his wife Nancy, and they have two children and five grandchildren. Mr. Woodling graduated from the University of Miami with a Bachelor of Science degree in geology. He later completed an MS degree in physical science and taught and coached at Sunnyside Middle School in Tucson for 13 years. In 1974, he purchased a cattle ranch on the San Pedro River and he ran Brangus cattle for 20 years. In 1980, he purchased a ranch in New Mexico which has conservation easements on it and he has continued to operate his ranch as a working cattle ranch.

REESE WOODLING: I guess I'm the only one in New Mexico at the present time that has a conservation easement on a working cattle ranch. I put that on voluntarily. My story is basically one of personal enlightenment and I would like to tell that story today. It's a personal story, and it involves a lot of real soul searching. It involves a lot of family dynamics and I want to share that with you as a rancher, and as a property owner. I guess I have a little different opinion than Bob Sharp, I really appreciate his wonderful speech and I'm not as good a speaker as Bob or Bill, but I will try to convey to you some of the feeling that I have toward this special place. This was a ranch that I dreamed about since I was a child and having been raised in Cleveland, Ohio, and then having spent time on a farm in Canada, I had an uncle who really mentored me and introduced me to livestock so my interest was livestock and farming, not ranching.

What I'd like to do now before I go on with my personal story and how this ranch actually got conservation easements on it or the fact that it can never be subsidized in perpetuity, I'd like to show you some slides of the ranch real quickly so you get an idea of what I can feel for when I talk about this particular land.

This is the ranch headquarters, this is in a canyon, the drainage is toward Animas Peak which is off in the distance, it drains east. This is all in New Mexico, and this is the ranch house where I live.

The next slide: we do get snow at this altitude. We're up about 5,700-5,800 feet and this is still at the canyon. Many years ago I built a barbecue area to entertain friends from Tucson and we've done that for the last I guess since 1983 so that would be 18 years. We just finished having over 100 people at the ranch during the month of July. They can hike, they can ride, they can talk, they can sit around the barbecue, they can visit. We have great meals and I also do a little education. We go out and look at cattle and so on.

All the pictures you are going to see are on deeded land which are on conservation easements. This is in a pasture where we're moving some cattle from one pasture to another. We do rotational grazing.

This was taken in February or March. That's me on one of my favorite horses, and as you can see the weather there at that time of year is fairly warm. I just have a light vest on.

This is a not a year round running creek but it's considered a riparian area, this is Walnut Creek, it also drains into the Animas Valley.

This is gathering some heifers out of a pasture looking east toward the Animas Mountain to the right.

This is a view, one of my favorite views on one of our private pastures looking down Harry's Draw looking at Animas Mountain which is to the east, and that's the Gray Ranch off in the distance.

This is me on a horse that's now dead. I had that horse for 25 years.

This is an old corral that we sort in. We sort on horseback when we come out of the forest allotment, we do have an allotment.

Now we're getting into the summertime. We warm season grass ranch, mostly, and we're getting into the growing season now.

These are some cattle on some private land that's becoming green.

This is our shipping pasture where we keep horses and cattle for a few days before we bring the cattle in to work them or shipped.

This is one of my favorite little draws on the ranch, Walnut Pasture. I was going to build a house here at one time years ago.

This is Whitmire Creek and it runs in front of the house. It runs about eight months out of the year, although with the drought we're presently experiencing in the decade just past, the creek hasn't run as often. This was taken last summer during the July rainy season.

This is my wife Nancy on her favorite horse, Belle and that horse we've had for 30 years.

And this is sunset taken in the summertime.

This is what happens when you manage a ranch properly. This is as you can see, grammet grass growing in a swale, one of our private pastures.

This is in September, late September after the rainy season.

This was in late October, early November another pasture that we just rotated and you can see the amount of grass.

Cattle in the shipping pasture in November right before we were bringing them in for shipping.

This is me out on a pasture pointing out some grass, different species.

This is the last picture, which is another piece of private land I've taken. You can see the calves laying down and this is right before shipping in early November.

So you can see from those photographs that this place has a special meaning for me. I've been on that land for 20 years and for the first, I'd say 15 years of my ranching life, I was involved with cattle. I really didn't pay too much attention to the land. I did some rotational grazing but my main emphasis was the cattle and we raised registered brangus, commercial brangus and I guess one of my real joys in life was when I was elected International Brangus President in 1985. I guess that shows that my peers in the registered breed felt that I was the kind of person they wanted to represent their organization.

I traveled to New Zealand, Australia and Argentina during my reign as president, representing the brangus breed. That was in 1985. When I came back to the ranch which had a manager at the time, I began to realize that I needed to take a more active role in the land management aspect of the Caskabell Ranch. It is 40 square miles, and it's a lot of deeded property. I began to realize that there was some things I needed to do to enhance the grass growth and to enhance the wildlife and this I have done for the last 15-16 years.

Another event that happened and I am very, very proud of, was that I was the first and only rancher in New Mexico to be nominated for the Society for Range Management "Excellence in Grazing" award. That award is very important to me for one reason. It means that other people, other experts in the field of range management, have recognized that I have done something that is different and worthwhile, I was nominated by the Forest Service and that is very unusual for a Forest Service Organization who are usually head banging in New Mexico with about every rancher they can find, to nominate somebody to that award. That award is very important to me and that sign is still up on the road advertising that fact.

Now, conservation easements.

I own the ranch with my wife Nancy, I have two children, we promoted those children to be independent from the day they were born, even though deep down in my heart I wanted them to be ranchers. We promoted their independence. As a result they both went away to college. One has a degree in nursing and now a masters in nursing and she is a professor of nursing at New Mexico State in Las Cruces, and has no interest in coming back to the ranch. She has got her career and she is very much of a liberated woman. She's kept her own name in her marriage and this is what happens when you raise your kids to be independent. They don't exactly do what you want them to do.

My son is a wonderful mechanical engineer and he can fix anything and he loves to come to the ranch, and he loves to fix the tractor or the pickup but he doesn't want anything to do with cattle. It's very frustrating to see this young man come down to the ranch because he could manage that ranch very well and do a very, very good job but he doesn't like cattle. He just says, "Dad, I don't want anything to do with the cattle, just let me fix the tractor or whatever."

So, I'm 65-years-old and about three or four years ago I was out riding and I began to realize, what's going to happen when I'm no longer around or I can no longer work this ranch? As I looked at those pictures and most of them look over to the Gray Ranch, a lot of that country you saw was on the Gray Ranch and they have conservation easements on the ranch, I began to think. And I began to do a lot of real serious soul searching about who I was and what this ranch meant to me and then I got the crowning blow when my wife said, "Well, I'm ready to retire from school counseling but I never want to live on the ranch." And I thought, "Oh wow." And she was raised independent too and I married one of them.

So I was out riding, I think it was about 1997 or 1998, by myself, moving a few heifers and there's nothing for me that's greater than going out spending all day, looking at my cattle on my private property and moving them from one pasture to the next and watching those heifers graze, or watching the cows and calves frolic. I enjoy that, it's one of the greatest joys of my life but I had to come to the conclusion that the land is bigger than me. The land is more important than one single person, and one single person's desire in life.

And I know this is going to go against a lot of people in this room but I wanted to explain my family situation, my situation where I was coming from because I think we're all different. Bob Sharp is standing up here and I agree with everything he said, he is a wonderful speaker. He spoke from the heart and he's been through hell doing what he's had to do. Bill Miller spoke from the heart, Bill and I are very active in the Malpais Group and we've spent some time in airplanes together, traveling around talking about the Malpais to various ranching groups all over the west, so I know Bill Miller is sincere with what he says. Bill Miller really believes what he says and when he's ready or things happen that he can do something on his ranch, that's his decision.

And so this was my decision and then I had to convince my wife. She does not like the word perpetuity. It does not sit well with her at all and this was in 1998. And so I started talking to her and her first reaction was, you know, "No, you're not going to do this." I said, Well now wait a minute, we've got kids that are not interested in the ranch. They like to come and ride or work on a tractor or have the barbecues, but they don't want to put in the work. Unless you've been a rancher as I have for 30 some years and I was raised on a farm in Canada and my uncle worked me to the bone as a kid, you don't know what work is. It really is hard, hard work and it's not glamorous, there is nothing glamorous about ranching. But anyway, I worked on her and we talked and we discussed this and finally about a year later she said, "Reese, you do what you want to do." She said, "you love the land and even though it's our ranch in deed in the d-e-e-d in the legal, you know, Hidalgo County Courthouse, even though it says my name on the deed, you really are the one to make this decision."

The kids were very upset about it because of course, they could see down the road that ranch would be worth a lot more for developmental rights and they were giving that up. I talked to them and actually they were wonderful, they went right along with it. My daughter is 42, my son is 38 and they have their own lives and they're not into money and they're not into greed or anything like that and they just said, "Dad, you do what you think is best for the land," and I admired that in my two children and their spouses. I have grandchildren, I have five of them and what I did, you know, what I decided to do through Malpais and Bill Miller was a big instrument in that in getting that thing done.

They raised the money and I did sell those easements. I got some money and paid down the mortgage, but that isn't why I did it. I did it because I did not want to see what is happening all around Tucson, or what is happening all the way to Tucson, from Tucson to my ranch. I drive I-10 and I see what's happening over by Benson and I see what's happening in the Dragoons. I see what's happening all over the southwest and then I think the crowning answer came when my wife and I took a trip through Colorado two summers ago. The summer before we put easements on the ranch and I saw what's happening in Colorado and I was in Colorado looking at ranches in 1968 and you could still look around Colorado and not see homes on every ridge top, wherever there was a view. Now you can't go anywhere in Colorado and see an open view, it's all gone. The land is gone and for me as a rancher and as an open space advocate, I just could not see that happening to what you saw on those slides. And that's basically my story. Thank you.

VI. Question and Answer Session with Panel

LINDA MAYRO: If we could have all the speakers come to the front and they will take your questions, thank you.

QUESTION: I just wanted (inaudible) the taxed land and then they decided on the whole issue agricultural status was, lower that and say, (inaudible) the assessed value theoretically, the assessed value of it was diminished to the county. However, there is still a value there and it's owned by somebody, there is still a property there for just the development rights let's say, they have a value and as you've heard they can actually (inaudible) reappear if the agreement is terminated. (Inaudible)

PANELIST:

I'll take a shot at what you are saying here. In the counties that we deal in, those lands are assessed at agricultural values. Until such time as they went into subdivision values they are assessed and taxed at agricultural values so if you sold or donated an easement, you really wouldn't change the taxable value of that property until such time as it came back and was developed then the tax would escalate.

PANELIST:

I can't remember the study that came back from and I was handed that study at the National Governors Association Meeting in Washington, D.C. They did a study on these subdivision lands, and if my memory is correct on that, for every dollar of taxation that there is on the developed land there is \$1.27 cost. For every dollar of taxation on agricultural assessed land, there is twenty-five cents of cost.

AUDIENCE: Does that include social services?

PANELIST:

The demands for social services, improvements, those types of things. Law enforcement, ambulances, fire trucks the whole thing. Does anybody else, before we go on, does anybody want to comment on that?

PANELIST:

Our ranch consists of many old homesteads and many ranches that were put together to form better economies of scale. One of our ranches has 78 sections and we have 160 acre homesteads spread all over the ranch. In other words, our couple of thousand acres of deeded land isn't together and I have in my hand here, a map that the county science team has put together that basically says that all my land is now biological core for critical habitat. Critical habitat and I have a matrix in my hand with the science team saying that my land shouldn't be grazed or if it is, conditionally grazed. And the bottom line, it would be insane for me to sell development rights or put conservation easements on my land unless I have long term security that I can graze cattle on federal land or a state's easement. So on one hand, we have the county, I call it their nonsense science team, political science team, identifying places where this isn't really good for grazing and then we're here talking about development rights and conservation easements. It just doesn't make sense unless ranchers have a long term ability to graze cattle. So, we've got a real contradiction together, do you have any solutions to that?

PANELIST:

Yes, the long term solution Jim, that's what we've got to be aiming for. The long term solution at the San Raphael, that's guaranteed. I'm not sure at the Malpais, whether or not the lands at the Malpais are guaranteed to be used in ranching. With regard to your 160 acre homesteads, maybe somebody like Wally could answer that better, but obviously with your 160 acre homesteads you have to be able to make some land exchanges to put those into one unit I would think. I don't know whether you can do it on your state lands, most of yours is state lands Jim?

AUDIENCE: About 50% federal, about 50% state.

PANELIST:

Well, I think they stopped the ability on state lands to exchange lands and I think it's gone before the ballot four times in the past decade and every time it's been turned down. And that's got to be changed so that you can exchange those lands. And then Pima County, they have to cool it a little bit. They just have to look at the big picture that we were talking about and not concentrate totally on biological values and be more specific.

PANELIST:

I think Linda has a couple of dates when she's having some meetings where this is going to be discussed in a lot of detail.

LINDA MAYRO

For those of you who would like to come to spend much discussion about this management matrix, the next science team meeting is on the 23rd. I think it's one to five. I think it's in the Public Works Building, Room C in the basement.

LINDA MAYRO

The next meeting of the ranch team is on the 28th and we will be discussing this management matrix that was developed, not the science team and we will go forward as to how you fill in the blanks if you will. The example that was passed around was simply that, an example. It's not a done deal, and it's not a set of recommendations. It's just something to move forward with. We will probably combine the ranch and science team to work out where those conflicts are and where those compatibilities also are and so with that said, I think we should move on back to the subject of conservation easements and you are certainly welcome to attend any of the science or ranch team meetings that are coming up.

PANELIST

The only protection we've got there is the language that we've drafted into the easements and I really believe it's caused us some grief trying to do a little fund raising in those. But once we go talk to the people who provided those funds, they totally understand it.

QUESTION: Are you familiar with a lot of over grazed land in Pima County and have you done any consulting for people in grazing management?

PANELIST

I am consulting now, yes.

QUESTION: Can a dude ranch be built on your property?

PANELIST

No. The limits are 20 guests per night, that's in the conservation easement. We exceeded that by a couple this summer. A few weekends we had 25 and 26, but I don't think Malpais needs to know about that. But we are not a dude ranch at all. When we have our friends come down for the month of July, it's because my wife has her time off from school and we love to entertain and it's a way to educate. We take a lot of people from Tucson that have never been on a ranch in their life, kids even. We show them what a real working ranch is like and we've been doing this since 1983 and I think we touched a lot of lives. We are now getting families back that were kids back in 1983 and now they are bringing their kids and it's just a wonderful thing that my wife does. She provides all food and all the organization and all of the work but we'll have close to 100 people over five or six weekends.

QUESTION: What about the perpetuity though?

PANELIST

The perpetuity is that these conservation easements will never go off the ranch. That's the perpetuity and that's what my wife didn't like. That's what I had to convince her that yes, you are doing something forever. Like Laura said, forever. I mean that is a long time but I disagree with Bob Sharp on one issue. I don't feel like I've lost control and I don't feel like I'm losing any kind of control because I enjoy people coming on the ranch and I enjoy dialogue. I enjoy the idea of having Mr. Wildlife expert come on and say, "You know, you can do something here to help this particular species," or whatever. Yes, once a year Malpais sends a team on and they have to do a baseline study of what was there when we put the easements on and are there any changes? But I don't feel, as a rancher, that I have control anyway! Bob talked about control. Jeez, the things that we have no control over are weather and prices! You know, I mean you go into a ranching operation, you have no control over anything! I mean, I will have to sit down and talk with Bob Sharp about the control issue, but I'm finding out that you don't get rain for a summer, you don't have grass like you saw in those pictures, you know? And you are sitting there with 500 calves which that ranch will run, 500 mother cows and you have 500 calves and the price goes from eighty-five cents for a four way down to seventy-two cents and there goes your profit for the next three years. You don't have control. There's nothing you can do about that so I don't know if I've answered your question or not.

QUESTION: What happens after you leave?

PANELIST

Those easements stay in perpetuity and if and when the ranch is sold, then those, the new owners will have to abide by those restrictions.

PANELIST

Bill was very involved with that easement.

PANELIST

That particular easement will meet the IRS Code. It's the only one that we hold today that will totally meet the IRS Code. It is an easement in perpetuity and the loopholes in it are slim to none so it's here forever.

QUESTION: So it will be a ranch even when ranches are obsolete?

PANELIST
That's right.

PANELIST
That's right, that's right.

PANELIST
They're already are obsolete.

PANELIST
They are already obsolete. I can tell you all how to make a small fortune in ranching. Start with a big one.

PANELIST
I think you had a question.

QUESTION: Yes I did but firstly, a comment about the total control. I think Bob Sharp was talking about pride in ownership.

PANELIST
I know what he's talking about.

PANELIST
One small control issue. The control issue with the Arizona State Parks, who by the way did an exceptional job on that particular easement. When we sold the easement it was very unique because there is no entity in the State of Arizona that had the funding at the time to buy those development rights, so Arizona State Parks went out of their way and did a tremendous job in coming up with the funding to do that. One of the drawbacks of our easement was that the management control is under Arizona State Parks. I think that's important for Pima County, in their formation of their PDR Program. Who holds that easement and who has the management authority over your grazing system is very important. So, in extreme circumstances you may have to throw 500 cows on 100 acres or whatever for a day and then you have some guy coming down from the agency yelling at you saying you can't do it. In Colorado on the other hand, when they crafted their conservation easements in the State of Colorado, there is no control. All they have done is, they will pay the landowner for the right to develop and that's it and they have no control. You can go in there and graze it, do whatever you want with it in Colorado but you can't do that here in Arizona. So when Pima County crafts their provisions on the PDR Program I think that's important.

QUESTION: Now can I ask my question? Okay, when you spoke about your 40 square miles of range, they are as beautiful as the ranch is in Arizona, I've seen some of the ranches and they are very good too. How much percentage is easement and how much do you still own?

PANELIST
On that 40 square miles, that's 24,000 acres. I believe the deeded land was 6400? We had 6400 deeded acres and the rest of it, I think 16,000 was U.S. Forest Service grazing leases and then there was a 640 BLM and a 640 state.

QUESTION: But you have no control on the BLM land and the others, you just control the 6400?

PANELIST

As far as easements, as far as developmental rights.

QUESTION: On the easements?

PANELIST

I sold the easements.

QUESTION: 6400?

PANELIST

Deeded acres.

QUESTION: So I was just wondering about the percentage, how much?

PANELIST

But the way that land sits - well the Forest Service and everything is kind of melded together and by putting easements on there, there will never be any subdivision in that 40 square miles.

AUDIENCE: The gentleman that's over there expressed some ire about the county's scientific and technical team. I just wanted to point out that it's not the county, it's the U.S. Fish and Wildlife Service and the Endangered Species Act. What the county is going to do is craft something that will satisfy the (inaudible). And so if the map is unsatisfactory, he has to remember that the county is trying to do a balancing act between what the federal government will impose and what the people that own the property or have some rights to the property need.

QUESTION: I'm just wondering how Malpais and Mr. Woodling handled the endowment issue? And also, does Malpais take lands that aren't really ranches but may have been agriculture at one time? Quite small areas?

PANELIST

Do you want me to answer that?

PANELIST

Yes, you are our fearless leader, you answer it.

PANELIST

I'm afraid of a lot of things, so I'm not very fearless. We actually have a perimeter that we say is our Malpais region, okay? Those easements that we have acquired in there like I have said time and time again, none of them with the exception of Reese's easement meets the IRS Code. So what we have done is we've acquired those easements and within those confines we have not asked for an endowment to do that. We've just gone out and fund raised to do the monitoring. Fortunately or unfortunately, the Malpais Organization is somewhat lucky at this time because I fly and have an airplane and it's real easy to monitor an easement out of an airplane. It happens in a hurry and it doesn't take days, it takes hours.

The other part of your question was, do we take small parcels? The Malpais Region, basically a thousand square miles of it is about 30 families so there is really none within it. Now to expound on that a little further, we have had a couple of individuals that are outside of the Malpais area have come to us and asked us to accept tax easements for taxation purposes and one of the stipulations that we have put straightforward is, we do need an endowment to monitor those and also to protect us in case of litigation. And at this point, those easements have just kind of faded into the woodwork. We're not actively going out of the area to look for easements. I think what we're doing actively is trying to meet up with people like Pima County and stuff like that to work through and say, what is the best way to go about easements? How can we protect, as Mr. Sharp said, the private property rights of the individual?

PANELIST

And just one other comment. That it looks like someday there would be a premium when looking at the value of the lands. There would be a high, medium or open space as opposed to developable...a space that could be kept intact, so at some point it seems like the value of something that has perpetual limits on it would actually increase.

PANELIST

I mean people need to look at that. I mean it's not really a penalty. It's something that's valuable.

PANELIST

We're finding that, but you are also always going to take into consideration that the land that's on the perimeter's of those is going to increase in value too. So, we have to go back to the old economic side. You know, every thing goes up and nothing goes down.

QUESTION: I'm sorry if you answered this already but the proceeds when you sold the conservation easement - does some of that go to support the endowment?

PANELIST

No. The Malpais took that upon themselves to monitor that easement and that was one of their services I guess that Malpais offered. Now I did have the problem that I had a taxable event, a severe taxable event and that was another issue I had to talk over with my wife who also has an income, a separate income from the ranch and the kids too. So, it was a very, very difficult decision to do what I did and I wanted to share the story with you. I didn't even get into the taxes. Yes, I had a heck of a taxable event but I felt that at my age and in my situation with my family the way it was, my situation being totally different than anybody else's on that particular land, I was willing to bite the bullet and pay that taxable event out of the proceeds of the conservation easement to preserve that land from ever having, like as Bill Miller said, a three time abandoned trailer on 40 acres.

QUESTION: No one on the panel up there is presently ranching in Pima County, right?

PANELIST

No, and we don't want to.

QUESTION: Mr. Woodling is properly proud of the award that he received and he is to be congratulated on it, we enjoyed seeing those photographs. Sitting in this room are other people who have also won awards for their conservation stewardship. Their photographs would look different and why is that?

It's not because Pima County was over grazed, what kind of community do you see in those photographs? You saw oak woodland. I have never been to Mr. Woodling's ranch but did you see that snow picture? Is this Pima County? No. Do you look at the potential plan community on his ranch and say that Pima County is over grazed because it doesn't look like his 5000 foot high, oak woodland? No. You look at what the rainfall patterns, the rain fall amount, the soil type and the plant potential community and that's how you determine whether the range is being properly managed and you don't say, "Well, if it doesn't look like Kansas, it can't be right." So we have to be sure we have all the facts before we make derogatory comments about people in the audience, thank you very much.

PANELIST

I really appreciate that.

QUESTION: We have on our ranch, stickers coming from federal lands.

PANELIST

No smoking sign on it.

QUESTION: Where do those come from? Who are those people? Are they with the Nature Conservancy?

PANELIST

Does anybody want to hold up their hand and volunteer?

AUDIENCE: No, this has just happened a few weeks ago.

PANELIST

Ten years ago I would have said that probably the Nature Conservancy might have been subliminal in that. But I think under the management and under the styles of the Nature Conservancy today, they are very supportive of what you do.

QUESTION: Correct, but our land is a desert and the grasses will never look like your ranch but they looked beautiful this year and the stickers were all over in private land. Mind you, it wasn't even state land that they were on. They were on private land putting these stickers out there and they don't even know that this looks better than it has in 80 years. Who are these people affiliated with? And if we do sell our easement, are those people to look out for?

PANELIST

That's the radical environmental crowd that we were talking about earlier on. There are people out there that really believe that if you exterminate livestock grazing off of any open space land, you've improved it. There is also scientific proof that disproves that. I really appreciate what you all are saying about that and fortunately or unfortunately, part of my previous life, I did get to travel these Western United States exclusively, like to the tune of a million miles a year. I have watched the degradation of property, never by a cow, but by the human species that walks the face of this earth and cuts them into little bitty pieces. It happens and I'll talk about that at some other point but we have other questions.

QUESTION: I'm going to take it away from grazing and ranching.

PANELIST

So far and I don't know if Kim is still here but so far, Fish and Wildlife is interested in conservation easements in perpetuity on mitigation land.

QUESTION: But is it acquired?

PANELIST

I don't think so but I don't want to speak for them, I don't know that anyone has proposed CC&R's here in Pima County. They've been proposed in California and I believe because they were 99 years in duration it wasn't long enough, it needed to be in perpetuity. But what we're finding working with the services is that policies are developing. Therefore I think every question is worth asking.

AUDIENCE: I've got a question, and it probably should be answered by the Nature Conservancy but possibly you can answer it.

PANELIST

Don't ask me any tax questions.

QUESTION: Lets say the ranch is 100 acres of BLM land and 6000 acres of public lands. Can those easements be worded in such a way that if the rancher loses his grazing privileges on those public lands, that easement reverts back to the land?

PANELIST

We have that language recorded in our easements that are recorded on the fee title of that particular piece of property and we crafted it that way because the ranching community in our area, with the exception of one or two, are less than 40% fee. And if they lost their ability to graze, then I think that the Malpais Organization felt guilty that they actually were holding 160 acre islands in the middle of these things that really had no value. If they have no value, you may just as well develop. Because that's what you do to develop. That ruins the value of it.

QUESTION: Can you name some of those banks?

PANELIST

The grass banking situation?

PANELIST

No, the financial banks.

PANELIST

Oh, the one that comes to mind right now is PCA. Production Credit Association.

QUESTION: Is that a business bank or is it something run by the federal government?

PANELIST

It's a private entity.

QUESTION: I'm sorry to ask but I didn't know.

PANELIST

But it's private. It's really a stockholder entity.

PANELIST

Bill, the Federal Land Bank had a mortgage on the Caskabell Ranch in New Mexico and they subordinated without any question at all. They were very good. They are out of Las Cruces.

PANELIST

Federal Land Bank. Farm Credit also subordinated an easement for us. There are several of them that have. Most of the lending agencies that are Agriculturally based will gladly subordinate and they like to see conservation easements because it gives them a job in the future.

QUESTION: I would like to know the economics of the Malpai. Is it a non-profit?

PANELIST

It's a non-profit, a 501c3 tax code.

QUESTION: How do you get your initial funding?

PANELIST

The funding that we've got has been through either private donations or through foundations.

QUESTION: Then do you have any power or ability to make a profit? Specifically, do you have the power to go ahead and subdivide?

PANELIST

No. We don't. The only thing that we have is the rights. We own the development rights.

QUESTION: What does it mean to own the rights?

PANELIST

We can prevent it from happening. That's our task. Our mission is, is to maintain open space. I mean that's part of the mission.

QUESTION: You would plan to (inaudible) in perpetuity.....

PANELIST

In perpetuity, that's right and we're trying to develop enough security in the organization before we can project it out to the next 100 easements for everybody's information. Historically, easements only last for 50 years. I'm talking about utility easements, railroad easements, the whole bit, historically, that's all they last.

QUESTION: (inaudible) was such and it prevented the state and federal land surrounding your property from developing, would you elaborate on that?

PANELIST

Development in the sense that they cannot put homes on it? In other words, there would be very little incentive for the state land to come in there and try to trade land out someplace else so they could put a housing unit on it. For example, state land as mandated by the Enabling Act as I understand it in New Mexico and Arizona, they have to maximize the income for the education. So is there a chance that state land can come in and say, "You've got a beautiful ranch here, you have 640 acres of our land, we're going to try to trade some land out and try to get a 2000 acre and make a development." Well, there is two things that can prevent that, not for sure, I mean not something that is written in stone but first of all, the Malpais is going to jump up and say, "Wait a minute, no, you can't do that because Mr. Woodling has 6000 acres that cannot be developed and the adjoining ranch has this number of acres that can't be developed." So the State Land Department is not going to ever do that. Now what about a gravel pit or something like that? What about mining? Well, there would be pressure put on by either me as a landowner or as a grazing permittee or the Malpais to say, "Wait a minute, this land is forever protected for development and it also is protected as a ecological zone, we don't want a gravel pit here," and I can see where there would be some court action by Malpais or me to prevent something like this happening down the road. The same way with the forest service. You know they wanted to put up a microwave antenna on the highest mountain on the U.S. Forest Service which I have a grazing permit, we could put a lot of pressure on them not to do that for similar reasons. So it's more of a pressure thing than it is something written in stone but I have....

AUDIENCE Leverage.

PANELIST

Leverage, there you go, leverage. We have a lot of leverage.

PANELIST

We have time for a couple more questions from this gentleman.

QUESTION: Before this whole process started, I did grazing and cattle ranching and over the course of the last two or three years and there's been a lot of these educational seminars and we've had the opportunity for people that are environmentally oriented to meet some people that are ranchers and even miners and other segments of the stakeholders. And I understand you are distressed about the stickers put on?

QUESTION: Are you behind those people? Would you be honest and say you were?

QUESTION: I have no idea but what I'm trying to tell you is that getting the education I got has made me realize that we have common interests and we are in partnership with ranchers and cattle grazing is a legitimate and valid application for the land and for our interests as one of the lowest stress uses that you can do to the land. And I think if you will just be patient you will find that people will be coming around and realizing that we are in this together and our interests don't divert from the common interest. So the random person that puts up stickers just doesn't know what it's all about yet. You just have to give them time.

PANELIST

And we've also found out that environmentalism is a valid use of the land too.

AUDIENCE: I wanted to bring up the point that you talked about the Nature Conservancy, the Arizona Land Trust, organizations like that, and the State Parks Department that are essentially holding these easements. There is also another entity out there that has the possibility of holding some of these easements, that's your Natural Resource Conservation. As a branch of state government they do have the legitimacy to hold these easements. Now whether or not we qualify under the federal land mandates or whatever would be something we would have to try to work out.

PANELIST

Yes, they vary and they've been a tremendous help to us. Yes sir.

AUDIENCE: I would recommend that anyone who is interested in looking to convey land find out what the purpose is under. If you create an easement and it's accepted by a party that becomes an agreement. You need to know what their corporate structure is under which the easement is being granted and if their corporate structure limits the uses or restricts them to the point that it becomes a desirable thing for you to give an easement to them then maybe that's a good place for an easement, to the benefit that is a specifically agreeable use that you want to attend that land use to be limited. They wouldn't then, if according to the construction of their contract, their corporate structure, if in fact their's is to create a preservation or reduction of land use, maintaining low density uses or limit the uses in some way that you feel you appreciate it. Maybe that becomes a basis, if they are a good place to reposit or deposit the interest in land values that you are offering to them or that you sell to them, then their easement has purpose. They become the enforceable group that it is a mutual value for which you want to protect and they are the mentors of that value for which the easement is a value and you have a purpose.

QUESTION: My question is if a qualified 501c3 can buy a conservation easement, can any 501c3 buy a conservation easement?

PANELIST

No. That has to be a part of its tax code requirement and I'm not a lawyer.

AUDIENCE: That's what Laura said this morning.

THE END