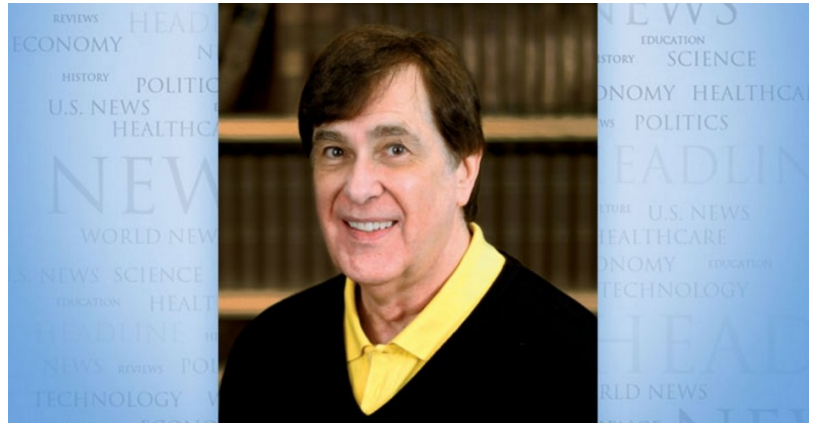




Conservation Easements and the Urge to Rule

Conservation easements: The Green Mafia tells us this is the only way to save the family farm. Without their tax credits and restrictions on development rights, America will be paved over and Astroturf will replace sod. We're in crisis, they tell us. However, as H.L. Mencken once warned, "A plan to save humanity is almost always a false front for the urge to rule."



Conservation and environmental groups openly advocate conservation easements as the answer to saving farmland, as do state departments of agriculture, farm bureaus, and the federal government. A full court press is on to lock in millions of acres of private property under the blazing headline, "Save the Family Farm."

There's no question that the family farm is under assault. Taxes, international trade agreements, inflation, and government regulations are eating away at the ability to keep the farm operating. I've never met a farmer who wanted to give up and stop working the land that perhaps his ancestors first acquired. In most cases it's agony for a farmer to decide to sell his property. On the other hand, the land is his main asset. To provide a good life for the family, selling the land, many times to developers, is necessary for survival.

However, there is now a much more lethal threat facing small farmers, and the outrageous fact is, this threat is being disguised as a way to help them. The real threat is the green solution — "conservation easements." And farmers are falling into this trap across the country.

Conservation easements are promoted by land trusts and environmental groups. Tax breaks are promoted. Even cash is offered those farmers willing to sell their development rights under the argument that this will drive away the temptation to sell the land to nasty developers, thus keeping it farmland. The clever slogan, "Farm land lost is farm land lost forever," helps sell the case for easements.

The promoters of such ideas are very good with the sales pitch. If it were politically correct to do so, one could actually hear "God Bless America" playing in the background as the promises to save the family farm roll off the pitchman's tongue.

Say proponents, "A conservation easement is a voluntary perpetual agreement that restricts non-agricultural uses such as mining and large scale residential and commercial development." They boldly promote the easements by promising that "the landowner continues to own, live on, and use the land." They even promise that the land can be passed down to heirs, along with generous tax credits. What's not to like? Desperate farmers are flocking to the pitchman's wagon to buy his life-saving potion.

Of course, as another famous pitchman, P.T. Barnum, once said, "there's a sucker born every minute."



Written by [Tom DeWeese](#) on July 30, 2013

Farmers beware the slick talker who has the answers to your woes. His answers may well be your demise — and your farm's. It's wise to read the fine print of a conservation easement agreement. Here are some facts.

The Facts about Conservation Easements

In a typical conservation easement, a private Land Trust organization purchases some or all of the "bundle" of a property owner's rights. The bundle includes development rights for the property; the ability to overrule the owner's choice of how to use the property, including adding more buildings or renovating or rebuilding existing buildings; in the case of farmers, it may include decisions on which fields to use for planting, or even which crops to grow and the technique to be used. All of these things come under the command of the easement. And all of it may become the decision of the Land Trust, because once the conservation easement agreement is signed, the owner's rights are legally subservient to his new partner, the Trust.

True, in exchange, the property owner receives charitable deductions on federal taxes based on the difference between the values of the land before and after granting the easement. The property owner receives relief from federal estate or inheritance taxes. Many states provide income tax credits and property tax relief. And the owner receives a payment for his development rights.

In the beginning it all sounds good: Money in the pocket, the farm safe from development, and the ability to practice the beloved tradition of farming. Well, maybe.

The fact is, under the easement, the owner has sold his property rights and therefore no longer has controlling interest in his property. Through the restrictions outlined in the easement, property usage is now strictly controlled, including everyday decisions on running the farm. In many cases, the conservation group that controls the easement demands strict adherence to "sustainable" farming practices. That means that strict controls on how much energy or water can be used in the farming process, access to streams for the livestock, use of fertilizer, etc., are all under the direction of the Land Trust. And there's more. Certain details weren't revealed to the landowner as he signed on the dotted line. For example:

- Trusts often re-sell the easement to other conservation groups. They sell and resell them like commodities. The farmer may not know who holds the control over his land. For these groups, the easements become a significant profit center as they rake in fees for each new easement they sign up.
- Worse, the conservation group may work directly with government agencies, helping to establish new regulations which alter best-management practices, driving up compliance costs. Eventually these cost increases can force owners to sell their land at a reduced price.
- This is especially effective when trying to dislodge a landowner who has refused to sell his land to the government or sign a conservation easement. The Nature Conservancy is a master at this trick, creating millions of dollars of income for the group. Its favorite practice is to tell the landowner that the government intends to take the land, but if they sell to the Conservancy then it will guarantee that the land will stay in private hands. But of course, since the government intends to take the land it is now worth much less. So they get the landowner to sell at a reduced rate. Then the Conservancy calls the government agency to tell them the good news that they have the land. And the agency pays the Conservancy full market value. They call that "Capitalism with a heart!!"
- Because ownership rights are muddled between taxes, restrictions, and best-practices requirements, it can be difficult to find a buyer willing to pay a fair market price for the land. In a sense, once the



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easement is signed, the owner has just rendered his land worthless on the open market.

- Conservation easement deeds use broad language that expands the trust's control but very specific language that limits the landowner's rights.

When productive land is taken off the tax rolls, a revenue shortage is created that has to be made up by other taxpayers, causing rate hikes in property taxes.

Some Are More Equal Than Others

All of the combined dangers from conservation easements, and all of the combined powerful forces of Land Trusts and governments seemed to land on the head of one innocent, lovely lady named Martha Boneta. Her story made national headlines last year and led to a colossal battle in the Virginia state legislature — a battle that continues to rage today without resolution.

In Fauquier County, Virginia, where Martha (and I) reside, the chief “conservation” group is a behemoth called the Piedmont Environmental Council (PEC). They have managed to work their way into every nook and cranny of the county, specifically in the county government. PEC people have bored deeply into the county development office and other county agencies; they converge on farmers to pressure the establishment of conservation easement, and they make a ton of money from them. It's good to be king.

In fact, PEC holds sway over nine Virginia counties and they brag that they have succeeded in “helping citizens protect nearly 350,000 acres” of land with “voluntary conservation easements.” PEC calls it one of the most dramatic private land conservation successes in the nation. It is interesting to note that those nine counties, in particular Fauquier County, are the main center of the famous Virginia horse country where, throughout Virginia history, the rich landed gentry have had the pleasure of riding their horses across vast open land in organized fox hunts. These horsy people are rich and powerful with vast estates in the countryside. Many have contributed to the PEC land conservation effort as a way to keep open space available for their fox-hunting pursuits.

It is also interesting to note the comments and attitudes often expressed by these people concerning newcomers to the county. Say the horsy gentry, there must be a way to curtail new people from coming into the county and buying or developing property. That's because, they charge, these newcomers have no understanding or respect for the age old tradition of riding their horses over the land that now gets fenced in or blocked by these unwanted intruders. How dare they do that to their own land! The answer to their desire to stop it — the PEC.

At a January, 2013 meeting of the Fauquier County planning commission, it was revealed that 96,600 acres of county land is in conservation easements (or 23 percent of the total land area of the county). A little research revealed an interesting detail. It seems that, as the conservation easements are sold to the public as a way to save the small family farm, in reality, of the 23 percent of the land, only two percent of it is actually small family farms. The rest is basically the vast estates of the landed gentry who have found a way to not only keep the land open for their fox hunts — but to also reduce their property taxes.

Last year, when I presented these statistics in a talk in Richmond, Virginia, a member of the Piedmont Environmental Council commented that he “never thought he would hear a conservative advocate class warfare.” Actually, I was trying to prevent it.

Martha's Plight



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Into this atmosphere, enter Martha Boneta. If one were to write down all of the requirements as expressed by the Greens for their idea of the perfect small farmer, Martha Boneta would be their poster child. Martha just wanted to farm. She loves it. And she is very creative about it. It was her dream come true when she found the small farm in Paris, Virginia. It had been on the market for at least six years. And so she was able to purchase it at a very reduced price from the Piedmont Environmental Council.

Everything was looking great for a lady anxious to get her hands in the dirt. She is into organic farming — just like the PEC advocates in their publications, on their website, and on bumper stickers — “Buy Fresh, Buy Local.” Martha made the farm a haven for rescued animals. She restored the heavily deteriorated barn and turned it into a small farm store to sell her products — items produced right there on the farm.

Oh yes, there was just one small detail brought up at the very last minute during the closing meeting for her mortgage loan as she was purchasing the property. The Piedmont Environmental Council slipped in a conservation easement on the property. This specific easement did not pay any cash to Martha nor did it provide any tax credits. All the benefits went to PEC. Martha signed the document because she had been told conservation easements were a way to protect the farm from being developed. She was for that.

But there is one major aspect of Martha’s value system that doesn’t fit the PEC profile for the perfect small farmer. She believes in private property rights. And that’s when the trouble started. Space does not allow a full description of the battles Martha has faced over her attempts to farm her land. Here is the “Cliff notes” version:

Martha does not live on the farm, she owns a home in another location. The conservation easement she signed said she could have a small 1,600-square-foot residence on the property. She never used the facility as a residence.

The Fauquier County planning board suddenly issued notice that Martha would be fined for selling items that were not produced on her farm, something she never actually did, and that she needed another permit in order to use the facility for events.

She was immediately threatened with fines of \$5,000 for each violation brought by the county. The evidence used against her by the county was a photo of a children’s birthday party that Martha had posted on her Facebook page, allegedly proving that she had rented out the barn for a party. In fact, it was a private party for friends. No money exchanged hands for the facility, but the battle was on.

Martha began to learn what a powerful weapon conservation easements can be in the hands of those who wanted to control her actions. The easement gave the PEC the right to occasionally inspect the property for “violations” of the easement. Suddenly Martha was informed that PEC inspectors would visit the farm to investigate the “living quarters.” Rather than a random occasional or annual visit, PEC came back again and again; demanding to look into her private closets; even banning her right to videotape the inspections on her own property.

The PEC found fault with a simple water nozzle Martha had purchased to use in washing her animals. Somehow that was a violation. There is an old cemetery on the property dating back to 1832. In it are buried the families of former residents of the area and black slaves. To keep the farm animals from walking through the cemetery, Martha installed a simple fence. “Violation,” said PEC, “It damages the view shed.” On and on went the harassment over such idiotic claims. Along with it came thousands of dollars of legal expenses as Martha fought to defend herself.



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Eventually, as a result of non-stop pressure and the threat of fines from the county, plus the pressure from PEC, Martha was forced to close her farm store, seriously damaging a major part of her ability to earn income from the farm.

What was her real crime? She had challenged county planning restrictions. And in doing so, she had become a threat to their authority and that of the PEC, which is the driving force behind county controls over private property.

Non-Governmental Control = Government Corruption

Every American, especially farmers, should learn this lesson from Martha's story: Conservation easements, comprehensive planning, and controls over private property, while always sold as a way to help, are actually a Trojan Horse of corruption.

If there is a poster child in this story it is the government of Fauquier County. Corruption begins with the absolute influence and power unleashed by a non-governmental organization like the Piedmont Environmental Council. It is aided by an elite few who seek to use government power for their own personal gains. And it is enforced by a compliant county Board of Supervisors that will use that power as a weapon to crush anyone who dares stand up against them.

Beware America! Unfortunately, Martha's story is not unique. Every community has its own version of the Piedmont Environmental Council calling the shots behind the scenes. Their very agenda of power, and the corruption it brings, is now showing itself in every local and state government — all under the overused and unsubstantiated excuses of environmental protection and "local planning."

Tom DeWeese is one of the nation's leading advocates of individual liberty, free enterprise, private property rights, personal privacy, back-to-basics education and American sovereignty and independence. Go to <http://www.americanpolicy.org> for more information

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