

Conserving Private Land: The Role of Non-Governmental Organizations in Conservation



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Introduction

Similar to Gunter, author of *Building the Next Ark*, I was raised with an appreciation for nature. This appreciation was passed down by my grandmother, Barbara Lamb, who is an avid supporter of nongovernmental conservation organizations. One organization that she supports, The Nature Conservancy, will be discussed later in this essay. Therefore, I approach the topic “The Role of NGOs in Conservation” with a genetic bias, supportive of non-governmental organizations (NGOs) with an American perspective (RECN 639, 2007 p.4). After researching the topic, I found similar and different strategies NGOs use to conserve land in the United States and New Zealand. A strategy common to both nations, is conservation on private land through land acquisition. To conserve private land, New Zealand utilizes covenants and the United States utilizes easements. Central and state government policy judicially recognizes and defines these forms of conservation which allows NGOs to partner with private landowners to conserve land. NGOs utilizing easements and covenants are known as land trusts. The significance of this strategy to conserve private land is how land trusts create corridors and buffers, expanding the existing 'island like' boundaries of public land. Despite this innovative strategy of land conservation, easements and covenants are not flawless and will adapt by government policy and planning in order to remain effective.

The outline of this essay is as follows: First, this essay defines a NGO and compares the role of NGOs to government in private land conservation. Next, it describes two NGOs, The Nature Conservancy (TNC) of the United States and The Queen Elizabeth II National Trust (QE II) of New Zealand, and their strategies for conserving private land. There is specific focus on the NGO's strategy of land acquisition; which is implemented through conservation easements in the United States and covenants in New Zealand. Government policy and planning involving easements and covenants is also discussed. Lastly, the essay analyzes the long term

effectiveness of government policy and planning regarding conservation on private lands through easements and covenants.

Discussion

A non-governmental organization (NGO) is a private organization independent of the government. NGOs serve a variety of causes, including the environment. Some environmental NGOs hold land trusts. A land trust is an agreement whereby an administrative body, such as a NGO, agrees to hold ownership of a piece of private property for the benefit of the landowner. Land trusts are used by nonprofit organizations to hold conservation easements and covenants.

In America, since the 1960's there has been a significant increase in NGOs, as people lost confidence in the government. However, this trend is not unique to America. Today, Gunter claims that "NGOs command attention due to their numbers alone... the last 20 years have seen a veritable explosion in the number of [environmental] NGOs on the international stage" (2004 p.28). A reason for the recent explosion of NGOs is because government is not capable of supporting all public concerns, especially issues pertaining to the environment.

The Role of NGOs vs. Government

The American government pioneered public land conservation. As the creators of national parks, American's had strong faith in government to provide adequate land conservation. However, by the mid 1970s, this belief faded. Opposition grew on the government's ability to acquire land for the purpose of conservation and in protecting land that was already government owned. Government has many voices competing for funding, and land conservation lost priority by 1980. As a result, Americans realized they could not solely depend on the government for land conservation; they'd have to do it themselves. For that

reason, “from 1986 to 1995 people were forming new land trusts at the rate of one per week” (Brewer, 2003, p.9).

Although the creation of land trusts was in response to government shortcomings, the purpose of a land trust is not to replace the government’s role in land conservation but to complement it. Coordination of services and legislation between the two entities results in a successful partnership of private land conservation. As a result, “federal, state and local governments have found able partners in national nonprofit organizations, and in public and private land trusts, to assist in land protection and acquisition” (Chafee, 1992, xiii). Inherent differences between NGOs and government provide NGOs unequalled success in conservation on private land. Alison Jolly explains how

the enormous importance of NGOs lies in their expertise. It is they who know scientists, both foreign and local. It is their people who have slept in the woods, bird-watched at dawn, negotiated at noon with the provincial politician, and exchanged oratorical speeches of friendship with the local chief under the moon, washed down in local beer.

(Gunter, 2004, p.29)

Jolly’s quote captures the many masks NGOs can easily wear. In addition to their expertise, “NGOs provide a promising medium... due to their unique position both above and below the state. States are paradoxically both too big and too small when it comes to resolving translational threats like biodiversity loss” (Gunter, 2004, p.27). The unique combination of their expertise and position provides NGOs flexibility unobtainable to the government.

Flexibility is a valuable advantage NGOs have in terms of land conservation. Chafee explains how flexibility allows NGOs to be competitive in the real-estate market. NGOs bring agility to projects. “These attributes include speed, the ability to bring money to the table and close quickly on a threatened parcel that might otherwise be lost or made more costly by bureaucratic delays” (1992, p.5). Flexibility provides the private sector freedom from often constraining laws and regulations that make it impossible for most government agencies to be competitive. For example, these constraints prevent the government from bidding at auctions or

paying land instalments. NGOs are creative. They willingly use the complexities of the tax code and create unique financing arrangements to conserve private land (Chafee, 1992). Unlike their government counterparts, these advantages allow “NGOs [to be] adaptive in the theoretical lenses of political bargaining and social movements” (Gunter, 2004, p.32).

Even though NGOs have advantages in conserving private land compared to the government, this does not mean that NGOs should replace government in conserving land.

Morrisette best clarifies this often misunderstood viewpoint.

It is essential to understand that this approach to providing environmental conservation on private lands is not the same thing as the privatization of environmental protection on private lands. This approach does not suggest that the protection currently provided by the government should be provided by private entities. Instead, this approach encourages private action in pursuit of a public good in addition to, or apart from, the government’s protection of the environment.

(2001, p.377)

Although, at times there might be an overlap in private land conservation services, “governments should not try to be land trusts, and land trusts should not try to be government,” says William O’Connor who helped craft Wisconsin’s [conservation easement] program. We should not ask land trusts to put on a shoe that doesn’t fit” (Myers, 1993, p.295). In 1977, the New Zealand government recognized these differences and created a NGO in order to be more effective in conserving private land.

Private Land Conservation in New Zealand

Historically, the New Zealand government had sole responsibility for land conservation. These areas, or Crown Land, were centrally concentrated in the mountainous regions to minimize user land conflicts. Therefore, two thirds of New Zealand's land, which is held in private ownership, exists in the lowlands along the coast which holds significant conservation value (www.nationaltrust.org.nz). “Surveys carried out under the Protected Natural Areas

Programme; suggest that a variety of natural habitats has survived on private land” (Brumley et al, 1986 as cited in Edwards, 1988, p.1). Therefore, despite user conflicts, it is critical for New Zealand landowners to protect coastal habitat due to the threat of development. A strategy for landowners to conserve private land is a covenant.

New Zealand conserves private land through covenants. "A covenant is a form of contract between a landowner and some other individual or group, by which restrictions are placed over the future use of their land, thus protecting the land's qualities" (Edwards, 1988, p. 24). New Zealand government policy allows for covenants to be exclusive and unique to the land. A covenant is flexible; it can be designed for particular purposes. This tailors conservation to suit the specific characteristics of the land and desires of the landowner.

Since the creation of covenants in 1977, Queen Elizabeth II National Trust (QE II) has been the principal administrator of covenants. QE II conserves more private land with covenants than the combined figures of the former Department of Lands and Survey, the department of Conservation and other local authorities (Edwards, 1988). Therefore, this essay only focuses on QE II due to its unparalleled success in conserving private land through covenants.

The New Zealand government created QE II National Trust, when land management statutes were under review in 1975. One of New Zealand's largest lobbying groups, Federated Farmers Incorporated, was the driving force in creating the national NGO land trust. They made submissions to the Government, concerning the management of private land which resulted in the creation of QE II and a visionary piece of legislation that recognizes the value of conservation on private land (Edwards, 1988).

QEII was established by the Queen Elizabeth the Second National Trust Act in 1977, "to encourage and promote, for the benefit of New Zealand, the provision, protection, preservation and enhancement of open space" (www.nationaltrust.org.nz). Open space is defined in the Act

as, "any area of land or body of water that serves to preserve or to facilitate the preservation of any landscape of aesthetic, cultural, recreational, scenic, scientific, or social interest or value" (www.nationaltrust.org.nz).

Even though, conserving private land is only one of the ten functions of QE II, covenanting is its major role. QE II is a NGO that chooses to not be involved in the politics of conservation; believing this sideline stance ensures its combined support by both the Government of the day and the landowners it serves (Edwards, 1988). As a result of QE II and its strategy of using covenants, landowners have voluntarily protected over 99,800 hectares of private coastal land in New Zealand (www.nationaltrust.org.nz).

Private Land Conservation in the United States

Similar to New Zealand, policy and planning in the United States has conserved a significant amount of private land. The most significant policy to impact conservation on private land is the Uniform Conservation Easement Act (UCEA). The act was approved by the National Conference of Commissioners on Uniform State Laws in 1981. It said that conservation easements under the act are valid regardless of common law rules (Brewer, 2003). Most states have either adopted the UCEA or written their own statutes authorizing conservation easements that follow some or most of the UCEA's provisions. Prior to the policy, the absence of a federal uniform conservation easement statute caused problems, "including a hesitancy in enforcing restrictions that would be pressed immediately in most states" (Brewer, 2003, p.151). Fortunately, with the creation of the UCEA a large majority of conservation easements are being upheld in court. A second policy NGOs utilize for conservation on private lands requires support from congress.

This policy creates an incentive for landowners that is unique to the United States and does not exist in New Zealand. It requires the United States government to provide income tax

rebates for conservation easements on private land. US Code Section 26 170(h) creates a federal income tax deduction for the donors of qualified conservation easements. In April 2003 Senate passed S. 476. This policy included new tax incentives for conservation. Since then, representatives have introduced policy to strengthen and increase tax benefits (www.lta.org). In order to provide tax incentives to donors, NGOs must be a nonprofit organization. A nonprofit organization earns recognition by the Internal Revenue Service (IRS) of the federal government. Nonprofit or 501(c) status allows donors to receive a tax rebate (Crompton, 1980). A tax rebate is one of many incentives to encourage a landowner to forfeit their property rights in place of a conservation easement.

Due to government policy and planning, the land trust movement has grown along with the general rise of public awareness and support for environmental protection. However, it originated from a small base. Brewer found that in 1950, fewer than fifty local trusts existed (2003). Since then, a rapid growth in new land trusts has occurred and continues to the present time. "Of the approximately thirteen hundred local land trusts, well over half have appeared since 1980" (Brewer, 2003, p.9).

One of these land trusts, and the most notable in utilizing conservation easements to protect private land in America is the Nature Conservancy (TNC). TNC "is an international non-profit environmental organization dedicated to protecting biodiversity" (Sawhill, 1996 p. 43). It has grown from modest beginnings and has become the largest private conservation organization in the world. Regardless of its growth, TNC remains site based. Its method of conservation is simple: TNC buys land. Through its self anointed title, as the real estate arm of the conservation movement, TNC is at the forefront of utilizing easements within the environmental community (Gunter, 2004).

A mechanism equivalent to a covenant, which is widely used in the United States, is a conservation easement. "Conservation easements provide a tool for private and public bodies to

acquire individual development rights over private property" (Hodge et al, 1993, p.15). Similar to a covenant, the decision to place a conservation easement on a property is strictly voluntary. The landowner can choose to either sell or donate their development rights. However, the easement, once set in place, 'runs with the land' and is binding on all future landowners.

The reason landowners choose to place a conservation easement on their land is to protect clean water, clean air, or scenic open space. A conservation easement provides assurance that their land is protected forever by separating the right to subdivide and develop the property from the other rights of ownership. In the United States, "the amount of acreage that land trusts have protected under conservation easements between 1988 and 1998 increased by more than 400 percent to over two million acres" and the number continues to rise (Morrisette, 2001, p. 375). Conservation easements provide a deadly weapon against urban sprawl, creating corridors and buffer zones to enhance biodiversity. "In many cases, conservation easements provide the best, and perhaps only, tool for preserving open space and ecologically sensitive lands that are in private hands" (Morrisette, 2001 p375).

Conclusion

Traditional approaches to environmental protection, such as zoning, have generally ignored the possibility of individuals and NGOs voluntarily working together to protect the environment (Morrisette, 2001). NGOs such as QE II and TNC prove otherwise. They utilize government policy and influence government planning to ensure increasing success in conservation of private lands. Although, due to inherent differences determining the success of easements and covenants varies between New Zealand and the United States.

In New Zealand, QE II places a high priority in conserving private land along the coast. Due to wildlife protection favouring birds rather than four-leg mammals 'island like' conservation areas are acceptable. Therefore, QE II's strategic plan for covenants might not

focus on corridors to link centrally protected Crown land to the sea. Due to New Zealand's government policy, or lack thereof, QE II's strategy does require private landowners to donate development rights on coastal property. Coastal property tends to be more expensive because of its development potential. Depending on the real estate market, the lack of tax incentive policy in New Zealand could reduce conserving private land. Fortunately, for now, New Zealand landowners are generous and QE II receives more requests for conservation covenants by landowners than they can accept (www.nationaltrust.org.nz). In order for conservation on private land through covenants to remain successful, the QE II must continue to provide landowners with a service they need. This could require QE II to get into the political game of land conservation and lobby for conservation policy and planning rather than remaining in their current position of sitting on the sidelines. For now, with the combination of current government policy and covenanting strategies by QE II, landowners are voluntarily conserving significant amounts of valuable ecological habitat in New Zealand for today and forever.

Unlike New Zealand, NGOs in the United States stress the significance of easements in creating ecological corridors for wildlife. Americans value their mammals, some of which require a large portion of the continent for habitat. The value of easements is their ability to link isolated 'islands' of protected government land and expand the existing boundaries of those 'islands'. Therefore, American NGOs work closely with government entities that own public land to strategically plan corridors. NGOs must also play an active role in the political game of policy and planning in support of easements for private land conservation. "Current tax benefits may change at any time depending on interpretations of IRS and the whims of congress" effecting landowners' willingness to place an easement on their property (Brewer, 2003, p.164).

In order to best continue serving landowners, NGOs must continue to push, in order to advance governments' traditional practices regarding environmental problems. However, too often, it requires a crisis event to generate the attention necessary to mobilize support for major

policy issues (Gunter, 2004). "This can not be the case with biodiversity loss. If the planet reaches a stage that is clearly a crisis, the phenomenon of irreversibility prevents adequate resolution. Once we realize that a crisis is at hand, it may very well be too late" (Gunter, 2004, p.134). NGOs around the world, and more specifically in the United States and New Zealand, are allowing landowners who understand the 'crisis at hand' to make a difference.

Conservation on private land through covenants and easements is one of several strategies NGOs utilize for biodiversity protection. The strategy of private land acquisition requires strong government policy, relying on an intense watch by NGOs on government planning regarding the future of conserving private land. Fortunately, in New Zealand and the United States current government policy and planning is supportive of private land conservation. Although there is always room for improvement, with policy in place it is the role of NGOs, like QE II and TNC to apply it. As a result, NGOs partner with conservation conscience landowners, such as me and my grandmother to conserve private land. Through partnerships with private landowners and implementing government policy and directing government planning, NGOs play the most significant role in private land conservation. Conserving private land through easements and covenants is an innovative strategy NGOs use to expand and compensate for the 'island like' land conservation previously created by government.