Nonprofit pays off in easements

State has subpoenaed records in probe into possible abuses

By Jerd Smith, Rocky Mountain News

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Ken Papaleo / The Rocky

The first conservation easement accepted by the Noah's Crib trust was for about an acre adjacent to the home of former board chairman Rodney Atherton near West 87th Avenue and Youngfield Street in Jefferson County.

Atherton set up the trust and was chairman until late 2006.

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Llamas feed near a shed on property owned by Rodney Atherton and his wife in Jefferson County. Conservation easements granted on adjacent land has resulted in $360,000 in tax credits.

Ken Papaleo / The Rocky

Fenced horses on Rodney Atherton's property. Atherton or his law firm played a role in several land preservation arrangements, with connections to sellers, buyers or a trust.

A nonprofit program dealing with troubled youth transformed itself in five years into one of the biggest conservation easement holders in the state.

Now the Arvada-based land trust is at the center of the state's investigation into questionable open-space deals.

Since 2002, the trust, currently known as Colorado Natural Land Conservation, has entered into more than 100 conservation easement deals around the state, including dozens in December after the Colorado Division of Real Estate began an investigation into its operations.

Sixty-four of the easements granted by the trust led to about $15.7 million in state tax credits, with 51 of those each carrying the maximum credit then allowed - $260,000 - according to Revenue Department records.

At issue is whether what was seen as an innovative Colorado law is being abused.

The law permits private landowners to place their lands in protective conservation easements, forgoing future development in exchange for lucrative tax breaks.

The landowner retains ownership, but the easements must be held by land trusts or local governments in order to qualify for the program.

The trust is required to sign off on the value of the tax credits and ensure that the conserved land is kept pristine.

Late last year, Erin Toll, director of the Division of Real Estate, subpoenaed records from Colorado Natural Land on deals in Adams County as part of her investigation into appraisals.

"We feel it is our duty to the public and to the legislature in particular to explain with some degree of certainty how abuses are occurring if they are," Toll said. She declined to respond to specific questions.

A *Rocky Mountain News* investigation of the trust's activities shows that:

* The Denver attorney who originally set up the trust and served as its chairman until late 2006 got two open- space agreements with the trust on his own property, about four acres near his home in Jefferson County. The agreements led to $360,000 in state income tax credits for the attorney, Rodney Atherton, and his wife.

The man who was then listed as president of the trust said he never saw or signed the documents needed for the first easement near Atherton's home, which got a credit of $100,000, according to records.

* The trust entered into 13 open-space agreements on ranch land in southern Prowers County in southeastern Colorado that allowed both wind farms and oil and gas development, an apparent violation of Internal Revenue Service rules that the state uses to guide its program.

According to the IRS: A deduction will not be allowed for the preservation of open space if the terms of the easement permit a degree of intrusion or future development that will interfere with the essential scenic quality of the land.

* The trust repeatedly has entered into agreements with partnerships and individuals throughout Colorado where large parcels were divided into six or more smaller parcels, each with separate easements and tax credits.

Land protection stressed

Jill Ozarski, executive director of the Colorado Coalition of Land Trusts, said maximizing tax credits is not what the program is about.

"Mainstream land conservation trusts are in the business of protecting land," Ozarski said. "We are not in the business of getting people maximum tax credits."

In several cases, Atherton or his law firm have represented the property owners selling the parcels, the partnerships buying the land, or have signed the conservation easements as a representative of the trust, according to state and county records.

Atherton has not responded to repeated telephone calls or a written request outlining questions about the trust's dealings and seeking his comments.

Paul Geer, current president of Colorado Natural Land Conservation, also declined to comment, referring questions to his attorney.

The attorney, Sheldon Smith, initially said the trust did not create the easements that led to the tax credits, it just agreed to them. He did not respond to follow-up telephone calls.

The investigation of the trust has conservation advocates on edge because they fear it will shut down a program that has allowed Colorado to protect hundreds of thousands of acres.

Norma Anderson was in the legislature when the conservation easement law was passed in 1999. Now she is chair of Great Outdoors Colorado, an independent agency charged with protecting open space.

Oversight problems seen

"The problem is, this program has not been policed very well," she said of the conservation easement law.

Any trust that violates the law, she said, ought to be "put out of business."

Since 2000, Colorado Natural Land Conservation, formerly Noah Land Conservation, has become one of the largest players in the conservation easement program, which has protected more than 1.13 million acres from development.

Under the program, property owners who agree to limit development on their land can now earn up to $375,000 in state tax credits. The figure was raised from $260,000 last year.

The credits are calculated by determining how much money the property owner gave up by not developing the land. The real estate division is looking at whether some appraisals were inflated in order to increase tax credits to the owners.

Toll's office has sanctioned two appraisers involved in easement deals with Colorado Natural Land, including one involved in the Adams County easements.

Colorado Natural Land Conservation was initially incorporated by Atherton in 1999 as Noah's Crib.

It changed its name to Noah Land Conservation in 2003 and finally to Colorado Natural Land last year.

As Noah's Crib, it was set up to help juveniles as they emerged from detention facilities. Atherton was head of the board. Minister Randy Cornejo ran the program.

"Noah's Crib was a ministry," said Cornejo, who continues to work with juveniles at the Ridge View facility in Adams County through another ministry.

Cornejo said he and Atherton went their separate ways in 2002 after Cornejo took the Adams County job. Cornejo said he thought that Noah's Crib ceased to exist.

That same year, however, Noah's Crib transformed itself into a trust accepting conservation easements, according to its filing with the IRS.

According to property records, the first conservation easement Noah's Crib accepted was on land owned by the chairman of its board, Atherton, and his wife in December 2002 on a little more than an acre adjacent to their Jefferson County home near West 87th Avenue and Youngfield Street.

The easement generated $100,000 in tax credits, according to a new Colorado Revenue Department database.

The easement shows that Cornejo signed it as president of Noah's Crib.

When contacted and shown the 11-page document, Cornejo said he does not recall it.

"I can tell you I've never seen this document," he said. "I would have remembered an 11-page document. It doesn't make any sense to me.

"I don't even know what a conservation easement is."

He said he thinks it's his signature on it, but he is not sure.

"It's almost impossible to tell," he said. "It looks similar, but on the other hand, the way it drops down it doesn't look right."

Atherton signed the document as notary witnessing Cornejo's signature.

Ellyn Atherton, Rodney Atherton's wife, donated a second conservation easement for 2.55 acres near the couple's home in December 2005 with Noah Land Conservation. That matched a tax credit of $260,000 listed in the Revenue Department's database.

Both credits were the maximum amounts allowed by state law in each of those years.

Deal OK'd wind farms

By 2005, Noah Land Conservation was entering into dozens of conservation easements around the state.

They included 13 easements with members of the Emick family in southern Prowers County in October 2005 that allowed for development of wind farms, with the deal structured to maximize the tax credits, according to county documents.

The property had been divided into 40-acre parcels and deeded to family members and their companies 10 months earlier. Noah agreed to accept each parcel as a separate easement.

State revenue records show at least six of them appeared to get the maximum $260,000 in tax credits. If the property had not been divided, the Emicks would have been eligible for only one $260,000 credit.

In addition, the open space deals were all subject to an earlier lease the Emicks had made with an energy company to develop wind farms on the property. As a result, the land could be developed with turbines, transmission lines and windmills.

Oil and gas exploration, with Noah's permission, also is allowed, according to documents filed with the Prowers County clerk and recorder.

Greg Emick, one of the family members, declined to comment on his family's tax credit transactions. The easements were signed by Rodney Atherton as chairman of Noah.

The division of land into smaller parcels for tax credits can raise red flags, said Ariel Steele, a principal with the Boulder- based Tax Credit Connection, a brokerage that helps landowners sell credits.

"There are two problems that can arise," Steele said. "Fragmentation of ownership may cause a land management problem because there could be, for instance, 10 different people managing 10 parcels separately, and that would be worse than managing it as if it's one piece.

"The second issue with taking a piece that was originally intact, then subdividing it, is that it looks as if what they did was done strictly for tax benefits and not conservation purposes," she said.

Property divided

Similar patterns of dividing land for several conservation easements took place with the trust in Arapahoe and Adams counties between 2005 and 2007.

In rural Arapahoe County, it entered into six conservation easements with one person and five corporations in December 2005, each involving 35- to 38- acre parcels.

All six got the property from another corporation, MacLennan Ranch II LLC, for $10 each, according to county records. Rodney Atherton signed the deeds as manager of MacLennan Ranch II LLC, the records show.

He also incorporated MacLennan Ranch II LLC the year before, in December 2004, with Russell MacLennan as its principal. MacLennan later became a board member of the trust.

MacLennan declined to comment on the transactions.

In addition, Atherton or his law firm filed the incorporation papers for the corporations that entered into the easements with Noah.

While Atherton declined to talk to the *Rocky*, in December he told *The Denver Post* the Adams County easements under investigation represented a legitimate use of the tax credit law.

They include an easement entered into by a company controlled by former Denver Bronco Bill Romanowski.

Atherton said in published comments that the deals were structured to give Russell Mac Lennan the best return on his decision to preserve the hunting land from development.

In addition, he said the appraisals of the property were legitimate.

Eight of the Adams County easements got the maximum $260,000 in tax credits each, according to Revenue Department records.

$5 million appraisal

Another appraisal on property next to the town of Elizabeth that was put into a conservation easement with Colorado Natural Land drew questions from the town board in the fall of 2006, according to minutes of a September meeting.

Atherton appeared before the board as a representative of Noah Land Trust to talk about the $5 million appraisal on 14 acres that the owner wanted to annex into the town as part of a separate commercial development on four adjoining acres.

Noah had entered into two easements with the developer on the 14 acres the year before, with one parcel receiving a $260,000 tax credit, according to state records.

"It seemed a little high," recalled Elizabeth Town Manager Chris LaMay of the $5 million appraisal.

The vacant 14 acres had been appraised as if they were going to be developed as commercial property.

Still, the $5 million translated into $6.50 a square foot, while already developed commercial property in the town was worth $4 a square foot at most, LaMay said.

Atherton was concerned because the town's offer to buy part of the property for right of way would have jeopardized the $5 million appraisal used to back up the conservation easement, LaMay recalled.

Cornejo, the founder of Noah's Crib, never envisioned that the nonprofit he started to help juveniles would go on to become a controversial player in land conservation.

"I thought that nonprofit, I thought it had ended," Cornejo said. "This stuns me."

He said he found out that Noah was still going strong when a colleague showed him an article about the investigation.

"I didn't sleep for two days. I was just dumbfounded," he said.

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