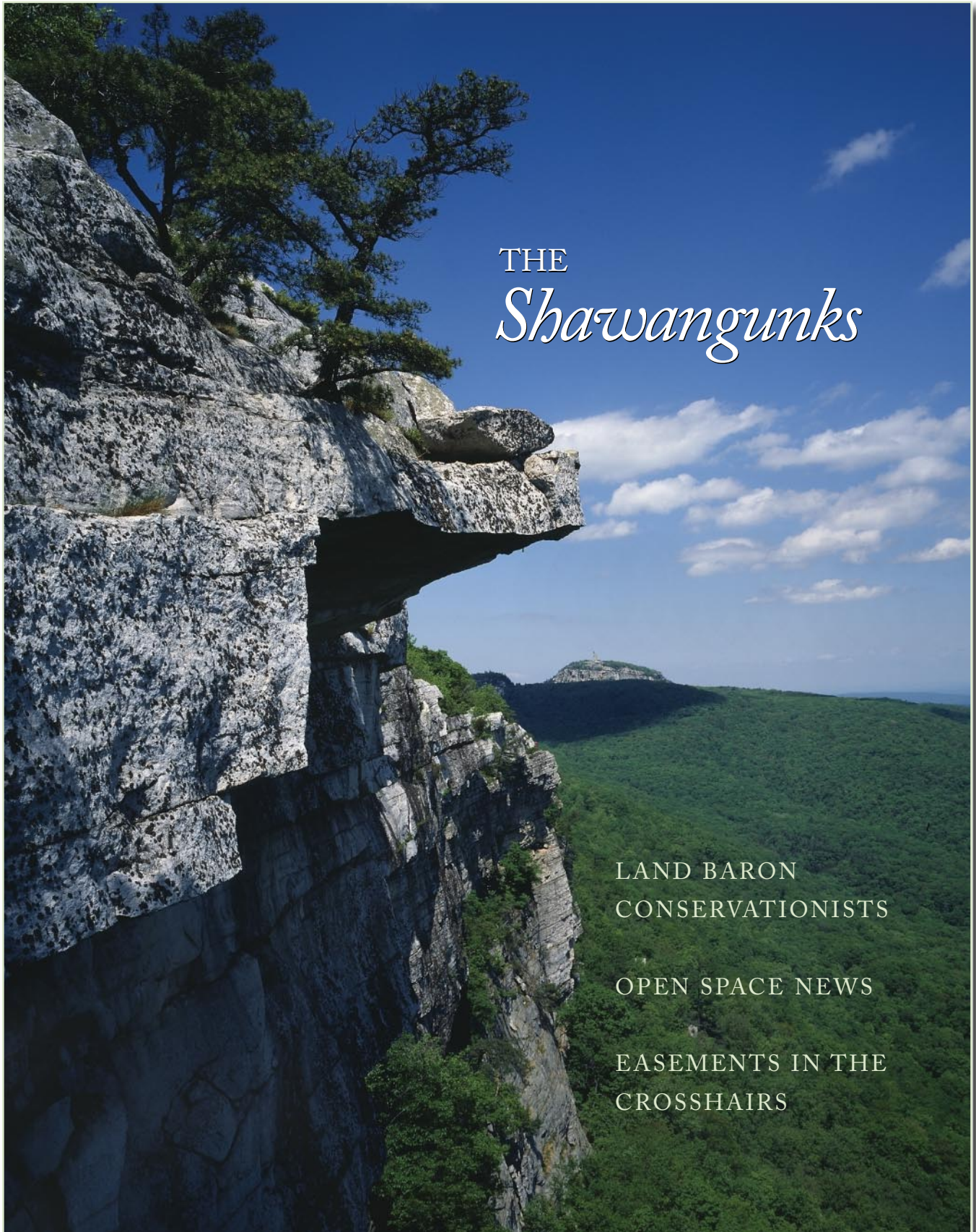


# OPEN SPACE

A PUBLICATION OF THE OPEN SPACE INSTITUTE ♣ VOL. 2 Summer 2004



## THE *Shawangunks*

LAND BARON  
CONSERVATIONISTS

OPEN SPACE NEWS

EASEMENTS IN THE  
CROSSHAIRS

# Revive the Legacy of Land Use Controls

BY JOHN D. ECHEVERRIA

Over 30 years ago, the U.S. Council on Environmental Quality, under the leadership of Republican Russell Train, published two important reports: *The Takings Issue* and *The Quiet Revolution in Land Use Controls*. The first made the point that the Takings Clause of the U.S. Constitution, properly interpreted in light of legal precedent and constitutional history, should not bar strong land use restrictions to protect the environment. The second documented the then burgeoning efforts at the state and local levels to enact

Here's why:

*High Cost:* There simply are not enough public and private dollars to pay owners what they are likely to demand to refrain from degrading our environment and our communities, especially in this era of painful budget limits and sharp competition for charitable dollars.

*Limited Effectiveness:* Under a voluntary approach, individual landowners can simply opt out of land conservation programs and thereby frustrate the achievement of

## POINT

*The pendulum has swung too far and we are due for a correction. Land acquisition has a role to play, but it cannot do it all, or even most of what is needed.*

regulatory programs to protect open space, ecologically sensitive areas, and individual communities.

Around the time of the publication of these visionary reports, some of the nation's most significant land use laws were adopted, including the federal Coastal Zone Management Act, the Adirondack Park Agency Act, and Oregon's path-breaking, statewide land conservation legislation. All of these laws remain on the books today.

Yet what a difference a few decades can make! Today, the vision of land conservation policy outlined by Train and his energetic young staff (in particular William Reilly and Boyd Gibbons) is largely in tatters. In the face of a strident "property rights" backlash, some conservationists have largely abandoned the regulatory option, preferring instead to rely on the voluntary acquisition of fee interests in property and, more recently, easements, paid for with a combination of private donations, public grants, and tax benefits.

To my mind, the pendulum has swung too far and we are due for a correction. Land acquisition has a role to play, but it cannot do it all, or even most of what is needed.

public goals. Conservationists properly mock "voluntary" efforts to control global warming. Why should voluntary action be any more effective in preserving the communities and landscapes we cherish?

*Myth of Permanence:* Finally, the chief purported virtue of acquisition, that it achieves permanent preservation, is almost certainly a chimera. Easements, in particular, are already under challenge in many places, and the social and legal pressure to remove or modify easement restrictions will only increase as decades and centuries pass.

Aldo Leopold, after years of studying this problem, came to the conclusion that the only long-term solution to America's land conservation challenge lay in the development of what he called a "land ethic." In particular, he argued that it was the landowner's responsibility to manage his land well, and that government subsidy of conservation would "ultimately bankrupt either the treasury or the land or both."

Russell Train and his young advisors took this advice to heart and so should we today.



John D. Echeverria is the Executive Director of the Georgetown Environmental Law and Policy Institute ([www.gelpi.org](http://www.gelpi.org)).

# Create More Incentives for Easements

BY DANA BEACH

Despite the revelations in the Washington Post and elsewhere of serious abuses of the tax advantages easements offer, conservation easements are among the most important tools available to protect the nation's environment and natural landscapes. Instead of curtailing their use, states and localities should enact more incentives to accelerate the purchase and donation of easements.

Some critics have denounced easements on the grounds that the parcels protected have been selected by land trusts "with no public input" and that easements compromise regulatory efforts. They prefer restrictive zoning enacted with extensive public debate. Practically, however, very few local governments, especially in high-biodiversity Southeastern states, understand or embrace the need for land conservation. Zoning is often designed to facilitate development rather than conservation.

restrictive zoning in South Carolina limits subdivision to 25 acre lots or larger. Notably, this zoning is under constant political assault by extreme property rights advocates. Forty-four of South Carolina's 46 counties have "rural" zoning codes with minimum lot sizes of one acre, or they have no zoning at all. Unfortunately, South Carolina is no exception. Throughout the Southeast, where biodiversity is among the highest in the nation, rural zoning is a prescription for sprawl. Leaving rural land protection in the hands of counties and states would consign most of the wildlife habitat in the nation to oblivion.

Critics contend that easements often deliver large tax benefits to individual donors with questionable public benefits in return. The Cheeha-Combahee easement was valued at approximately \$2.8 million. It provided an income tax benefit to the owners, and a cost to the taxpayer, of less

## COUNTERPOINT

*Leaving rural land protection in the hands of counties and states would consign most of the wildlife habitat in the nation to oblivion.*

Even the most restrictive zoning in the country cannot approach the level of protection afforded by conservation easements. Consider the case of the South Carolina Lowcountry, where landowners have joined with state and federal agencies to protect more than 160,000 acres of land since 1987 in the Ashepoo/Combahee/Edisto (ACE) basin initiative, almost half through donated conservation easements.

One protected property in the ACE is the 12,325-acre Cheeha-Combahee Plantation. With 21 miles of magnificent river/marsh frontage, dramatic topography and no local land use regulations, Cheeha-Combahee was a perfect candidate for a high-end golf course or equestrian development in the style of Hilton Head, just 30 miles to the south.

In 1993, eight families purchased Cheeha-Combahee and donated a perpetual conservation easement to Ducks Unlimited. The easement allows only 10 subdivisions with no parcel smaller than 600 acres. In contrast, the most

than \$1 million, or approximately \$80.00 per acre. In its protected state, the property provides enormous value for wildlife, water quality, and other ecological services. It has also facilitated a growing eco-tourism industry of kayakers and canoeists, along with traditional hunters and anglers who enjoy the benefits of a protected watershed and riparian vistas. Most importantly, Cheeha-Combahee lies between state and federal wildlife preserves.

Far from compromising conservation efforts, easements in the ACE basin have become a rallying cry for conservation in the public and private sectors throughout the state. They offer the hope that pristine ecosystems can be protected in perpetuity. In response to the success of the ACE, local, state, and federal policy-making now leans heavily toward conservation. Instead of compromising regulatory efforts, private conservation action in the Lowcountry has improved public decision-making.

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