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Conservation Easements on Montana Ranches

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The beautiful scenery, abundant resources, and rich traditions of Montana have resulted in growth and development that threatens the very features that make Montana the "last best place."

Developers have found that subdividing ranches can lead to immense profits, and this leads to the loss of large blocks of uninhabited land so important for wildlife habitat and the aesthetic appeal of wildlands. Just as important, the subdividing of ranches threatens the ranching heritage of Montana.

Today's ranchers are faced with a dilemma: Do I sell the ranch to developers at current high prices, or do I stay in livestock production and preserve the land and business that my family has worked so hard to grow?

Conservation easements are one alternative to selling a ranch. The economic incentives and possibly tax advantages of an easement may actually offset or exceed economic gain from selling.

But conservation easements are not for every ranch. They are not a quick fix or a cure all. Before entering into any easement, attorneys, accountants and financial advisors should be consulted.

What is a conservation easement?

Conservation easements are a voluntarily conveyed, partial legal interests in land. They are most effective in maintaining natural resources which are compatible with existing land uses. As such, a conservation easement is the formal expression of the property owner's concern for continued responsible land use and stewardship.

Picture property ownership as owning a bundle of sticks. Each stick represents a right to use the land in a certain way. Any of these sticks or rights can be removed from the bundle and transferred to someone else. Water, mineral, timber rights, and utility and road easements are examples of severable property rights familiar to most people. Ownership of these limited rights give the holder permission to do something (divert water, mine, cut trees, drive) on land owned by another person.



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A conservation easement differs in purpose and function. It conveys certain development rights or other rights of use, which are held in trust by a government agency or private, non-profit conservation organization. Conservation easements are used to protect wildlife habitats, ecosystems and open space, as well as recreational and historic features of the land. When a conservation easement is given, some of the sticks in the landowner's bundle of rights are voluntarily conveyed to the government agency or private conservation organization to keep the land basically as it is. Only those rights that the landowner chooses to convey are included in a conservation easement. The major benefit of a conservation easement is the protection it provides against development and other land uses potentially destructive to the property's conservation values.

The agency or group that receives the easement usually does not have the authority to use the rights conveyed to it. Instead, it assures those rights held in trust are not exercised on the property. A conservation easement could limit subdivision and development rights, commercial timber harvesting rights, or the right to build new roads. Each easement is different because each parcel of land is different, and each is designed in consultation with the landowner. All land uses not specifically given up in the easement deed remain with the landowner.

Easements in Montana

The Montana Open-Space Land and Voluntary Conservation Easement Act of 1975 cleared the way for use of conservation easements in our state. Since then, over 300,000 acres of Montana's landscape have been protected. Conservation easements have been successfully established within the river corridors of the Blackfoot, Yellowstone, and North and Middle forks of the Flathead, in the Madison, Bitterroot, and Big Hole valleys, along the Rocky Mountain Front in portions of the upper Missouri, and in many other parts of the State.

Conservation easements work best when their purpose is to keep the land as it is and maintain existing land uses. Easements are given to conserve ecological, open space, recreational, and historic values, which values can include important big game habitat, high quality fisheries, waterfowl habitat, natural and undisturbed ecosystems, wildlife and scenic river corridors, threatened or endangered species, recreational resources, productive agricultural land, educational resources, and historic sites or structures.

Any private landowner, whether an individual or a corporation, can convey a conservation easement. If the land is being bought on a contract or if the land is subject to a mortgage, written permission of the underlying title or mortgage holder is needed. Some conservation easements are sold, some are donated.

Who is eligible to hold conservation easements?

Local, state, and federal agencies are qualified to receive conservation easements. Private, non-profit, tax-exempt conservation organizations that have the interest and ability to maintain the easement terms are also qualified. The Montana Department of Fish, Wildlife and Parks (DFWP), The Nature Conservancy and The Montana Land Reliance are well-known organizations with successful easement programs in Montana. Some areas of Montana are served by local land trusts. Check with your county planning office.

Does a conservation easement open my land to the public?

Landowners conveying an easement can retain the right to control public access to their land as they have always done. Unless one of its purposes is to provide for recreational use, public access provisions are not included.

How long does a conservation easement last?

The landowner decides. A perpetual easement lasts forever. Montana law also allows for a term easement which must be in place for a minimum of 15 years. Perpetual easements provide the best protection for the land and make potential tax benefits available to the landowner. Term easements offer no such deductions. Few organizations will buy anything but a perpetual easement.

Landowner benefits

A conservation easement is an exercise in private property rights. Landowners who give easements gain the personal satisfaction of protecting the conservation values found on their land. Landowners also receive a partner who shares land stewardship responsibility and assurance that conservation values protected by the easement will be maintained by future landowners.

The donor of a conservation easement in perpetuity may also be eligible for certain tax benefits. For some, this is very important. For others, the act of conserving their land is the major consideration.

Some conservation easements can be sold. Thus, income is a benefit some landowners can receive if they can find a buyer of their conservation easement.

Income tax implications

The gift of a perpetual conservation easement to a qualified receiver can qualify as a charitable deduction for federal income tax, state income tax, inheritance and estate taxes. Term easements are not tax-deductible. To qualify for tax benefits, an easement must be for "conservation purposes" outlined in the Tax Treatment Extension Act of 1980 (Public Law 96-541). These purposes are: natural ecosystems and wildlife habitats (including threatened and endangered species), open space on high scenic quality or areas considered important by a government plan or policy, wetlands, recreation or education, and historical sites and structures. Only one of these purposes need be met by an easement, but all such values must be protected if present. The existence of qualifying conservation value is determined by studying the land and documenting these values.

For tax purposes, the fair market value of a conservation easement is set by a land appraiser. The income tax deduction is generally limited to 30 percent of the landowner's adjusted gross income each year. The landowner has up to six years to deduct the full value of the easement donation.

Estate tax implications

Easements can lower Federal estate taxes. For example, a ranch may have a reduced market value because an easement is in place that prohibits subdivision and development. The total value of the estate may be reduced enough to lower or in certain cases eliminate estate and inheritance taxes. (See MSU Extension's series of MontGuides on estate planning.)

Property tax implications

Under Montana law, property taxes on land are calculated in accordance with current land use. This means that the assessed value of land in agricultural use generally will not be significantly affected by a conservation easement that prevents subdivision. However, agricultural land placed under such an easement cannot be assessed within a subdivision tax class even if the surrounding area becomes developed.

Landowners who sell property and are subject to significant capital gains taxes may reduce this tax burden by donating a conservation easement before sale.

Value

A professional land appraiser determines the value of the easement, comparing the fair market value of the land before and after the easement is donated. The difference is the value of the easement. The easement terms play a major role in this valuation. The more property rights that a landowner conveys generally the greater the value of the easement.

If my land is so important, why doesn't some organization buy a conservation easement from me?

This could be possible, but organizations interested in holding easements have limited budgets and simply cannot afford to buy easements in many cases. These organizations have a process for ranking the importance of each potential project related to the special qualities of the land, the landowner's requirements, and the organization's financial capabilities.

How much can I get for a conservation easement?

If the tax incentives for a donation are not appropriate motivation in your situation, you may be able to find an organization to purchase the conservation easement. The amount of payment is dependent on the value of the land as wildlife habitat and to a certain extent the potential for that land to be developed in the near future. Some situations in Montana have resulted in land areas being placed into conservation easements for payments of \$100 per acre. In other areas where the wildlife habitat values are not as significant, the payments may be significantly less. The highest payments are for large portions of land providing critical habitat in areas sought for development. In many situations tax incentives may be greater than actual sale of the conservation easement.

Land-use terms

Only the land use limitations that are mutually agreed upon by the landowner and the receiving agency are contained in a conservation easement. These can include limitations or restrictions on subdivision and development, commercial use, mineral development, industrial use, roads, timber harvest, billboards, or any type of land use. Easement terms come from discussions between the landowner and receiving agency. Ideally, conservation easements clearly specify whether an activity may or may not take place on the property and avoid limiting those land uses which reduce a landowner's flexibility in management and historical use.

Enforcement

The voluntary actions of landowners and their commitment to wise land use has made easement enforcement relatively simple in Montana. Landowners and the organization holding the easement share a concern for land stewardship. The organization monitors each property on which they hold an easement. Problems that may arise most often are corrected routinely and voluntarily. However, the organization holding the easement does have authority, as a last resort, to enforce the terms of the easement through the courts.

Can a conservation easement be placed on a portion of my land?

Yes. Easements are flexible and can be tailored to each piece of land and the objectives of the landowner and receiver. It is possible that the unencumbered portion of the land adjacent to the easement may offset the easement portion that decreases in value. If the landowner seeks tax benefits from the donation, the land must qualify as a deductible gift and actually result in an overall reduction in land value.

Easement design varies from case to case. It is possible to reserve the right to build a few homes or to develop land in combination with a gift of an easement on an adjoining parcel. However, the value and the acceptability of the easement will be affected accordingly. A professional, experienced in these matters, can provide advice and definite answers.

Will my land be worth less if it has a conservation easement?

Probably, but if a landowner is concerned that the ranch will be worth less in the future, then profits from the easement should be invested to make up future differences in net worth. Also, much of the interest in Montana land purchases is from conservation-oriented people. The conservation easement may make the land more attractive to these types of buyers. In general, your land will be worth less to developers, but remain the same in agricultural value.

The process

Easements work best when initiated at least 12 months prior to the desired completion date. Proper easement design requires sufficient time to study the land and develop all necessary documents. An outline of potential steps follows:

1. Landowner and the potential easement holder meet and discuss goals, problems, options, and review the land's potential for a conservation easement.
2. Landowner consults with legal and tax advisors about the effects of an easement conveyance.
3. The potential easement holder conducts a brief field analysis of the land and prepares proposal.
4. Proposal reviewed, compared and decision made whether to pursue.
5. A preliminary title report is prepared for the property.
6. A proposed plan with recommendations for easement terms is completed, based on a detailed analysis of the land.

7. Landowner and easement receiver negotiates mutually acceptable easement terms.
8. An appraisal of the property is prepared to determine the value of the easement.
9. The receiver presents the easement to the local planning authority.
10. Landowner and easement receiver finalizes the conservation easement deed.
11. If necessary, public hearings, approval by commissions or boards or other input is obtained.
12. Easement conveyed and recorded.
13. Landowner and easement holder share land stewardship responsibility.

Cautions

The primary mistake a rancher can make is not getting enough professional assistance. Another major error is failure to anticipate future situations that should have been considered before agreeing to the conservation easement. Future timber harvest or salvage harvest of dead timber, potential home sites for future generations of the ranch family, significant mineral values and need for future ranch roads are only a few examples of issues that need to be part of the conservation easement consideration.

— Perpetuity is a long time

Also, consider that conservation easements may be more appropriate for those who have been on a ranch for a long time and know how a conservation easement would fit. Young or new ranchers may not have enough experience with a particular ranch to make long-range commitments.

Consider whether your motivation to sell or give a conservation easement could be achieved in another way. As examples, maintaining agricultural tax status on land in rapidly developing areas may already be satisfied through special tax provisions related to agricultural land in Montana. Reducing estate taxes could also be accomplished through the estate exercising special valuation provisions of the Internal Revenue Code.

In summary, investigate and consider as many aspects of a proposed conservation easement as possible. Get assistance from attorneys, accountants, tax experts and financial advisors who specialize in conservation easements. Talk to other ranchers who have conservation easements on their ranch. Although every situation is unique, the advice and experience of other ranchers could provide a major source of practical information.

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