

Marketing the Finest Ranch & Recreational Properties

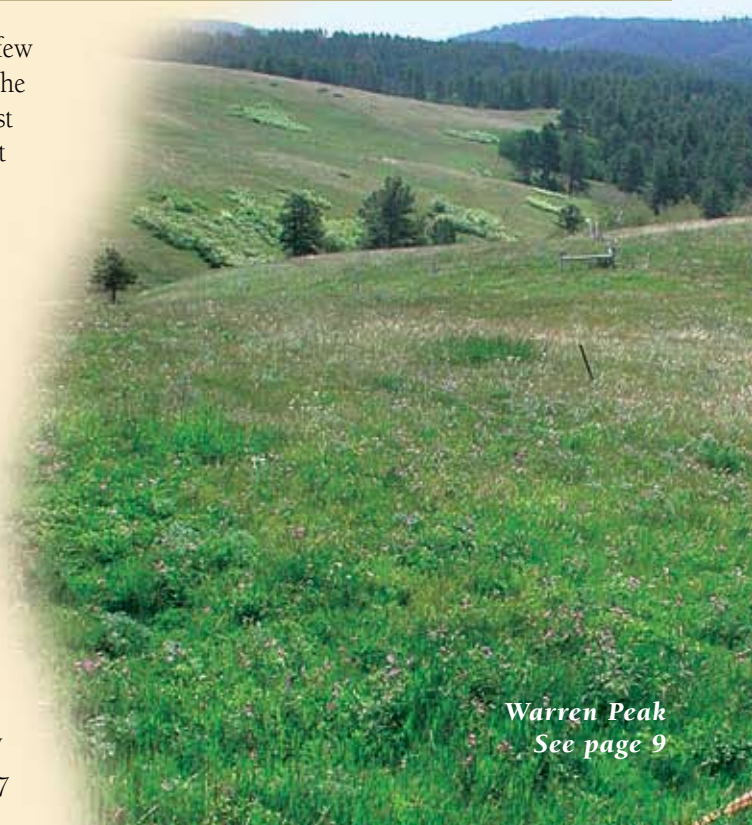
Conservation Easements What You Should Consider

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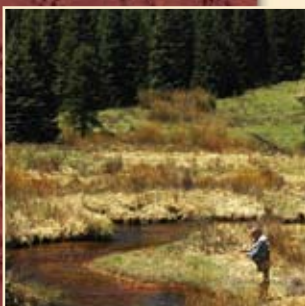
Outside of family and friends, there are few things that are more meaningful than the quality of life we enjoy here in the West through its scenic beauty, open spaces, abundant recreational opportunities, and agricultural heritage. Many people seem to share this view, since the Rocky Mountain West is now the fastest growing region in the country. The ranch real estate market is booming. Many new landowners buy ranching properties as an investment and to enjoy their recreational and natural amenities. Many long-time landowners contemplate the future of their land in the face of intergenerational transfer issues, rising property values, and fluctuating agricultural markets. Conservation easements are a tool increasingly used by both groups, when considering the future of their land.

A conservation easement is a voluntary agreement between a landowner and a conservation organization (land trust) or public agency

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*Warren Peak
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which limits the amount and type of development on a property in order to preserve its open character and natural qualities. Easements can be written to allow continued ranching, recreation and even limited residential development, provided that these uses are consistent with values of the property being preserved. Conservation easements are typically placed on the property in perpetuity. This means that the easement cannot be amended or revoked at the will of the person granting the conservation easement, and that the easement binds future owners. Nationally, over seven million acres are covered by conservation easements which are held by more than 1,500 local, regional, and national land trusts.

For many owners of ranching properties in the West, their land is their greatest asset, both financially and emotionally. This makes the ability of a conservation easement to perpetually limit future development either a tremendous attraction or an overbearing liability. For any landowner, the decision to enter into an easement is substantial and permanent, and should not be done without careful consideration.

The overriding reason for entering into a conservation easement is a strong desire to see the natural and productive values of the land protected. While there can be significant financial incentives for entering into an easement, they will seldom compete with future returns that could be received through retaining the ability to sell the land for the most profitable type of development. Federal income tax benefits for an easement are based upon the easement meeting Internal Revenue Service (IRS) standards for charitable donations. This means that the conservation easement cannot just simply reduce development, but also has to show the ability to provide a significant public benefit by conserving land for one of the following purposes: natural habitats, scenic areas, historical sites or public recreational and educational opportunities.

The degree of federal tax savings depends upon the value of the conservation easement, as determined by a qualified appraiser, and the income level of the donor. Easements used to preserve ranchlands typically range from 30% to 60% of the property's fair market value, but may be significantly higher or lower depending on the terms of the agreement and the development pressure in the area.

The IRS normally allows a maximum of a 30% deduction of the donor's adjusted gross income. However, if the value of the easement exceeds the donor's income, the excess can be carried forward for the five years following the easement's donation. If the donor is a corporation, the same rules apply, with the exception of a maximum 10% deduction limit. Landowners have the option to apply a 50% deduction if they use the property's basis (typically purchase price or inherited value) to establish the initial value of property in appraising the conservation easement.

In addition to federal income tax savings, some states like Colorado have a tax credit program. Colorado landowners who donate perpetual conservation easements can benefit by selling a state income tax credit or by receiving a refund for state income taxes. The annual credit limit has recently been raised from \$260,000 to \$375,000, effective January 1, 2007.

Conservation easements can also be integrated into estate planning. By lowering the appraised value of the property, an easement can help in reducing estate taxes. Furthermore, the IRS allows an additional estate exclusion equal to 40% of the value of the land already reduced by the conservation easement (but not improvements), up to a maximum exclusion of \$500,000. This benefit not only applies to the owner's estate but to their heirs for as long as the family owns the land.

Occasionally, conservation easements are also purchased. Competition for funding for easement pur-

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*Long Hollow Creek Ranch
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chases can be substantial and varies from state to state and often between counties. Most conservation easement purchases are bargain sales; although, the difference between the appraised value of the easement and its purchase price may qualify as a charitable donation.

Beyond potential financial benefits, conservation easements can provide a mechanism for families to plan for the future of the property when everyone is at the table. Everyone knows at the signing of the easement whether and how the land may be subdivided and what portions may be developed. These planning options can offer possibilities for finding equitable arrangements among family members as well as avoiding future conflicts over land uses when the property is passed down between generations.

Before entering into a conservation easement, the landowner needs to weigh a few considerations carefully. First and foremost is the permanent relinquishment of development rights and land use options. While easements may be amended to increase their effectiveness or ease of administration, they cannot be amended in a way that diminishes their ability to protect the land's conservation values or that lowers the appraised value of the easement.

A conservation easement will reduce the number of potential buyers of the property, reduce the property's sales price, and increase the time it takes the property to sell once it is on the market. The reduction in the appraised value of the land will also reduce the collateral value of the property for future borrowing.

All conservation easements include provisions for the land to be physically accessed and monitored by representatives of the organization holding the easement, typically once a year, or when a violation is perceived. While most land trusts are accommodating to the landowners' schedules, owners of easement properties need to be aware of this responsibility and potential intrusion.

The process of entering into a conservation easement can be long and complex. Even for donated easements, the landowner can have significant upfront expenses including legal reviews, appraisals, mineral reports, title searches, and baseline reports.

The terms of each conservation easement are independently negotiated. A properly constructed easement document protects not only the physical attributes of

the property, but also the landowner's future rights to own and enjoy the land. Terms of an easement need to be clearly stated. Open-ended provisions which are subject to future interpretation are recipes for conflict. It is very important to work with attorneys and land appraisers who are familiar with easements and federal law governing charities and charitable donations. Similarly, there is a diversity of organizations which are qualified to hold conservation easements at the local, state, and federal levels. Focuses and philosophies can vary substantially and landowners should choose one that most closely aligns with their interests.

Landowners should know that the IRS has placed increased scrutiny on conservation easements in recent

years after cases of abuse have surfaced in terms of inflated appraisals and easements being placed on properties that provide minimal public benefit.

Conservation easements are not for every landowner. Most decisions to enter into an easement are only done after careful planning and consideration. Their terms and benefits vary between locations, properties, and the organization with which the landowner chooses to

work. Easement law and programs are always evolving, which will make them more or less attractive to landowners depending upon their circumstances. The most important thing to remember is that conservation easements are totally voluntary, and each landowner should decide what is best for their own land.

For many owners of ranching properties in the West, their land is their greatest asset, both financially and emotionally. This makes the ability of a conservation easement to perpetually limit future development either a tremendous attraction or an overbearing liability.

Glenn Pauley is the Wyoming Stock Growers Agricultural Land Trust's Executive Director. Mr. Pauley is a native of Wyoming. He formerly worked as the founding Executive Director of the Southern Alberta Land Trust Society (SALTS). SALTS was Canada's first rancher-driven conservation organization and Alberta's first locally-based land trust. His experience in land conservation is further supported by a Master's degree in Environmental Design from the University of Calgary, where he completed his research on landowners' attitudes toward conservation easements. Mr. Pauley also holds a bachelor's degree from the University of Wyoming in Wildlife and Fisheries Conservation and Management. If you would like more information about the Wyoming Stock Growers Agricultural Land Trust and conservation easements, you can contact Glenn at 307-772-8751 or email: glenn@wsgalt.org.