

Conservation Easements

Many Montana landowners have responded to the rapid development of Montana's open spaces by using conservation easements to protect the agricultural, wildlife and natural values of their lands. Such easements are allowed under Montana's *Open-Space Land and Voluntary Conservation Easement Act*, which is one of the state's most important land use tools for the preservation of open space, wildlife habitat, our agricultural heritage, and rural landscapes.

Since the Act passed in 1975, it has allowed Montana's landowners – and certain public agencies - to permanently protect more than 1.1 million acres.

Over 780,000 acres protected are by Montana's private land trusts, 257,000 acres with Montana Department of Fish, Wildlife and Parks (DFWP), and 142,000 acres with the U.S. Fish and Wildlife Service.

Background

A conservation easement is a permanent deed restriction that controls certain future development on land with high agricultural, wildlife, scenic, recreational, or public values. Under Montana law, conservation easements may only be held by nonprofit land trusts or by public bodies (76-6-104 MCA).

Conservation easements can be placed on state school trust lands only under one of the following situations:

- The Montana DFWP can purchase conservation easements for parcels that are surrounded by or adjacent to land owned by DFWP as of January 1, 2001. This provision is primarily designed to allow easements on lands

within DFWP Wildlife Management Areas such as the Sun River Game Range or the Blackfoot-Clearwater Wildlife Management Area.

- A nonprofit corporation can purchase conservation easements for parcels that are surrounded by or adjacent to land owned by the same corporation as of January 1, 2001. This provision specifically allows The Nature Conservancy to purchase easements on school trust lands at Pine Butte Swamp on the Rocky Mountain Front near Choteau and the Matador Ranch in north central Montana.
- A nonprofit corporation can purchase a conservation easement for the Owen Sowerwine Natural Area near Kalispell. This provision specifically applies to a parcel of school trust land for which Montana Audubon has a special use license.

Current law does not allow conservation easements on school trust lands in any other circumstances, even if adjacent uses suggest a conservation easement is the best avenue for maintaining existing wildlife, agricultural, recreational or other public uses of the area, and even though the state can earn income from the easement.

An Example of Another Potential Type of School Trust Land Easement

The Whitefish/State Trust Lands Neighborhood Plan, a land-use plan for the 13,000-plus acres of State School Trust Land surrounding the community of Whitefish, envisions the purchase of conservation easements on trust lands to preserve public access where it has historically existed or is planned. In most cases, traditional forestry and recreational management on the easement lands would continue; conservation easements could

Resources

Conservation Groups

Montana Audubon

P. O. Box 595
Helena, MT 59624
(406) 443-3949
www.mtaudubon.org

Nature Conservancy

32 S Ewing St, Ste #215
Helena, MT 59601
(406) 443-0303
www.nature.org/wherewework/northamerica/states/montana/

Government Agencies

MT Dept. of Fish, Wildlife and Parks

P. O. Box 200701
Helena, MT 59620-0701
(406) 444-2535
www.fwp.state.mt.us

Montana Department of Natural Resources and Conservation

P.O. Box 201601
Helena, MT 59620-1601
(406) 444-2074
www.dnrc.state.mt.us

Statutory References

Specific Montana Statutory

References (Montana Code Annotated 2005, can be found at http://data.opi.state.mt.us/bills/mca_toc/index.htm):
Conservation easements: Title 76, Chapter 6, Parts 1 and 2
State lands: Title 77, Chapter 2, Part 1

also be structured to reserve a few carefully selected homesites. The goal of this neighborhood plan has been to work with the Montana Department of Natural Resources and Conservation (DNRC) to provide increased revenue for the beneficiaries of the school trusts while maintaining the economic, environmental, and cultural vitality of Whitefish and the surrounding areas. Conservation easements could help meet this goal, but are not allowed under current law.

The Value of a Conservation Easement on School Trust Lands

By law, DNRC, which has the responsibility of managing the state's 5.2 million acres of school trust lands to generate revenue for the state's schools for the long term, and the Land Board are required to get full market value for the sale of any interest in school trust lands. The value of a conservation easement is determined by an independent appraisal and is the difference between the full market value of the land and the value of the same land with the conservation restrictions in place. Typically, easement values vary between 30 percent and 70 percent of full market value, although values could be higher in some instances. DNRC and the Land Board, which is composed of Montana's five statewide elected administrative officials (governor, attorney general, auditor, superintendent of public instruction and secretary of state), would determine whether sufficient value is being generated from the proposed transaction to accept the easement.

Perpetual Conservation Easements

Some previous Montana Legislatures, particularly in 2003, have seen attacks on perpetual conservation easements - easements that continue as they are passed down through generations. These bills came from conservative legislators who are narrowly focused on individual private property rights. The anti-easement legislation died in committee, but the nature of the attacks suggested future challenges.

Currently, easements for conservation purposes can only be granted on school trust lands under limited circumstances. The 2005 legislature considered a bill to remove these restrictions and allow conservation easements on all school trust lands (SB 337, Dan Weinberg, D-Whitefish). The bill passed the Senate, but failed in the House. In 2007 Senator Weinberg tried again, by sponsoring Senate Bill 391 to allow state agencies to apply conservation easements to school trust lands. This bill would have provided agencies another tool to manage land for public use, while recognizing and protecting the lands' conservation values, such as clean drinking water and wildlife habitat. Montana Audubon and the Montana Smart Growth Coalition supported SB 391, which passed the Senate - but yet again, failed to pass the House during a particularly partisan legislative session. The idea was the subject of a legislative interim study committee and may be revived in 2009.

Recommendations for the Future

The Montana Legislature must ensure that the ability of landowners to voluntarily place their lands in perpetual conservation easements is maintained. The next Legislature

should remove the current restrictions on placing conservation easements on state school trust lands. The DNRC should be allowed to accept conservation easements on school trust lands for fair market value, thus preserving traditional uses - or allowing new uses that are determined to be in the best interests of Montana residents and the school trust. Hopefully the 2009 Legislature will finally pass the proactive and common sense bill to properly address this issue.