CONSERVATION EASEMENTS and PURCHASE OF DEVELOPMENT RIGHTS PROGRAMS

FACT SHEET

Vote YES for Open Space Campaign
P.O. Box 6757, Bozeman, MT 59771-6757
406-522-8105

Proceeds from the Gallatin County Open Space bond issue may be used to purchase development rights, or conservation easements, on agricultural land. In exchange for financial compensation landowners would voluntarily place their land, or a portion of it, in a conservation easement, keeping the land in agricultural production and preserving open space in perpetuity. Here's how it works:

What is a conservation easement?

A conservation easement is a legal contract between a land trust, a governmental entity, or other qualified organization and a willing landowner. The easement permanently limits uses of the land in order to protect its conservation values. A Deed of Conservation Easement must be recorded at the County Courthouse, and the restrictions run permanently with the land. A conservation easement protects the land from unlimited subdivision and development while also protecting the rights of private ownership.

Examples of uses generally permitted by a conservation easement:

- continued agricultural use;
- wildlife and aquatic restoration efforts;
- sale or gift of the property;
- selective timber harvest.

Examples of uses generally restricted by a conservation easement:

- subdivision for residential development;
- non-agricultural commercial activities;
- surface mining;
- elimination of wildlife or fisheries habitat protected by the easement.

The landowner continues to own the land and continues to pay taxes on the land. An easement does not necessarily grant public access, which is an important safety factor for many agricultural producers. Public access (e.g. a trail easement) is a potential item for negotiation within certain easements.

How is the conservation easement protected permanently?

The easement holder (e.g.: a land trust or governmental entity) is responsible for ensuring that the terms of the easement are met. The holder monitors the property on a regular basis, remains in contact with future landowners, and if necessary, is prepared to defend the easement using legal means.

Monitoring and defending easements is a permanent liability for the easement holder. Therefore, the easement holder establishes a dedicated fund to assist with those perpetual expenses.

What is a "Purchase of Development Rights" (PDR) program?

A Purchase of Development rights program is based on the premise that a property owner has a 'bundle' of rights that can be separated. The development rights refer to the landowner's right to develop his or her land for commercial, industrial, or residential purposes. A PDR program enables landowners to separate and sell their rights to develop land from their other property rights. The willing landowner is financially compensated for the development rights, but they retain all other rights of ownership, including the right to farm the land or transfer the land to other ownership.

A purchase of development rights can take the form of a purchased conservation easement, or can be structured as a "bargain sale" of the development rights. This "bargain sale" stretches public dollars and allows the landowner to claim a charitable contribution and potential income or estate tax benefits. In either case, the landowner is able to cash in a portion of the equity in their land, creating a financial alternative to selling the land for development purposes.

For more information, contact Debbie Deagen, Gallatin Valley Land Trust at 587-8404.