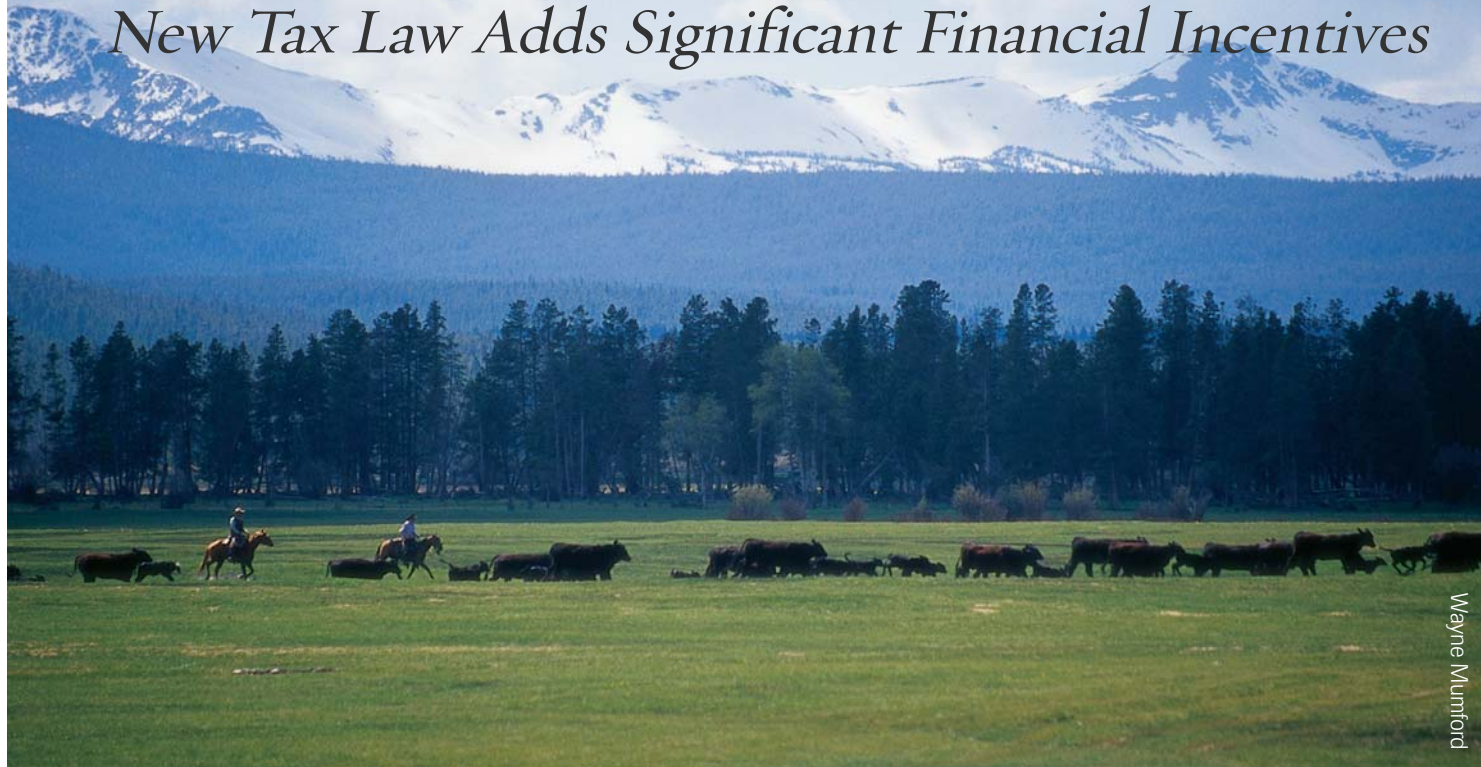


CONSERVATION EASEMENTS

New Tax Law Adds Significant Financial Incentives



Wayne Mumford

The Dooling Ranch in the Big Hole Valley is covered by a Nature Conservancy conservation easement.

If you've been thinking about a **conservation easement**, now is a **good time** to act..

The new Pension Protection Act, signed into law in August, 2006, raises the maximum federal income tax deduction for donating a conservation easement from 30 percent of the donor's adjusted gross income in any year to 50 percent. *Full-time ranchers and farmers – whose income is 51 percent or more from agriculture – can take deductions for up to 100 percent of their adjusted gross income when they donate a conservation easement*

If the entire deduction can't be used up in the first year, the law increases the number of years over which a conservation easement donor can take federal income tax

deductions from six to 16 years.

This benefit is also extended to farmers and ranchers with land held in c-corporations, overcoming a major hurdle for many landowners wanting to do easements when the deduction was limited to 10 percent

These new incentives are only available until the end of 2007. The time to act is now.

Defining "conservation easement"

A conservation easement is a restriction landowners voluntarily place on specified uses of their property to protect natural, productive or cultural features. A conservation easement is recorded as a written legal agreement between the landowner and the qualified "holder" of the easement, which may be either a

Key provisions of the new tax law

- Raises the maximum federal income tax deduction for donating a conservation easement to 50 percent of adjusted gross income in any year – up from 30 percent.
- Allows *working farmers and ranchers* to deduct up to 100 percent of their adjusted gross income in any year.
- Increases the number of years over which a conservation easement donor can take federal income tax deductions from six to 16 years.
- In effect until the end of 2007.

nonprofit conservation organization or government agency.

With a conservation easement

the landowner retains legal title to the property and, along with the easement holder, determines the types of land uses to continue and those to restrict. As part of the arrangement, the landowner grants the holder of the conservation easement the right to periodically assess the condition of the property to ensure that it is maintained according to the terms of the legal agreement.

Many rights come with owning property, including the rights to manage resources, change use, subdivide or develop. With a conservation easement, a landowner permanently limits one or more of these rights. For example, a landowner donating a conservation easement could choose to limit the right to develop a property, but keep the rights to build a house, raise cattle and grow crops. The landowner may continue his or her current use of the property, provided the resources the conservation easement is intended to protect are sustained.

Does every easement have to be perpetual?

For the donation to qualify for income and estate tax benefits, the conservation easement must be perpetual and apply to all future owners. Some organizations, however, may be willing to purchase conservation easements that are designed for a period of years. For



Martinells: We want the Centennial Valley to keep its agricultural heritage and openness

The Martinell family signed a conservation easement in 2006 that covers 4,000 acres of their ranch in the Centennial Valley of southwestern Montana. The paid easement, held by the U.S. Fish and Wildlife Service with funding from federal Land and Water Conservation Funds, provided “a source of cash for our cattle operation,” said Allen Martinell.

His brother Byron said: “I’m a firm believer in conservation easements as a way to protect what we have here. They may not be right for every ranch, but for us it is a way to strengthen our ranching heritage.”

example, the Wetlands Reserve Program administered by the Natural Resources Conservation Service, pays landowners for limited-term conservation easements on restored or existing wetlands that provide significant habitat for birds and other wildlife.

Can easements be purchased?

Yes, but opportunities for paid

conservation easements are declining as competition for scarce funding increases. The new limited-term law offsets the decline in paid easements by providing substantially increased benefits for donating an easement.

In a paid as well as a donated easement, willing landowners restrict development of their land. After selling or donating the devel-

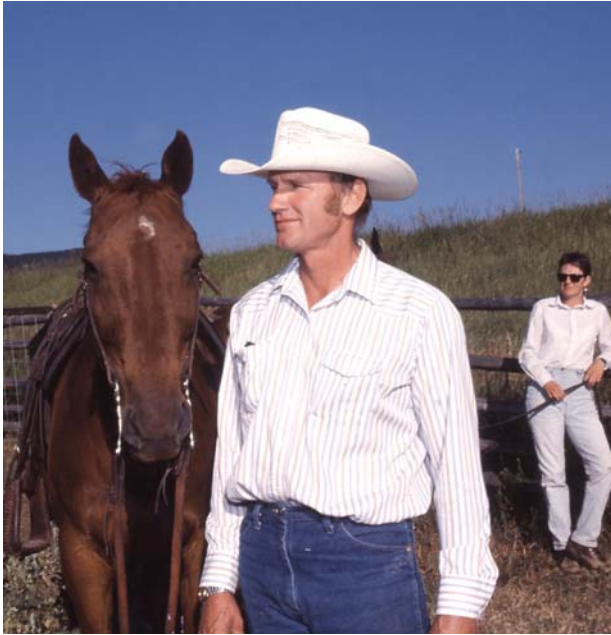
Public Benefits

- Protects wildlife habitat
- Keeps good stewards on the land
- Preserves ranchland and area economy
- Requires less in public services than subdivisions

Landowner Benefits

- Keeps land in the family
- Provides estate tax and other financial benefits that can help the ranch operation
- Keeps ranchland intact
- Guarantees how the property will be managed in the future





Bays: This made good sense for us

Mike and Lisa Bay signed a conservation easement with Montana Fish, Wildlife and Parks that covers 3,869 acres of the Bay family ranch north of Helena. Proceeds from the easement, signed in 1996, “helped us capitalize a portion of the ranch, helping to pass the land to the next generation,” said Lisa.

opment rights, the landowner retains all other rights of ownership, including water rights, using the land for agriculture or conserving it, preventing trespass, or selling or transferring the land to others.

Typically, private conservation organizations or government entities are the easement holders. These organizations do not acquire the right to build anything on the land, but only the right and responsibility to limit development of the property and protect its conservation values as described in the easement provisions. *Conservation easements do not require landowners to provide public access.*

In a purchased easement, landowners are generally paid the difference between the value of the land as restricted and its value on the open market. This is usually determined through a real estate appraisal. Because restricting development lowers the overall land value, the easement can reduce estate taxes.

What are the benefits of donated easements?

In a donated easement, the land-

owner receives income and estate tax benefits commensurate with the value of the rights the landowner is giving up – in most cases, the development value. The new tax law (see pg. 1) makes donated easements much more attractive for farmers and ranchers.

In many cases, the conservation easement can be a combination of paid and donated.

Do all donated easements qualify for an income tax deduction?

No. To qualify as a charitable contribution, each conservation easement must be perpetual and meet at least one, but not all, of these recognized purposes:

- protect relatively natural habitats of fish, wildlife or plants;
- preserve open space – including farms, ranches or forests – either for scenic enjoyment or in keeping with a clearly defined public policy;
- preserve land for public outdoor recreation or education; or preserve historically important land or structures.

How is a conservation easement enforced?

The land trust or conservation organization that holds the easement bears the responsibility of enforcing its terms. Typically, this means that the easement holder will schedule a property visit with the landowner at least once a year to document any development or changed uses. Unless the landowner and easement holder specifically agree to give enforcement rights to a third party, no outside group can enforce the terms of a conservation easement.



Doolings: We're happy with this easement

The Dooling family signed a conservation easement with The Nature Conservancy that covers their 6,300-acre ranch in the Upper Big Hole Valley. This voluntary agreement allows all current ranch operations to continue.

“I’d like this valley to stay in agriculture and I wish other ranchers here would sign conservation easements to make sure we keep the valley like it is,” said John Dooling.

In exchange for restricting their development rights, the Doolings received compensation from the Conservancy, but they also donated a substantial portion of the easement value.

Crarys: *Conserving this ranch and the wildlife habitat of the Rocky Mountain Front are important to us*

Dusty and Danelle Crary, owners of Four Seasons Cattle near Choteau, signed a conservation easement with The Nature Conservancy in 1999. The easement covers 1,760 acres along the Teton River, habitat for grizzly bears and other wildlife.

The ranch has been in the Crary family since the early 1900s. The Crarys want to pass the ranch on to their three children.

“Some folks have said I’m foolish to have taken out an easement because it eliminates the opportunity for my children to subdivide or develop the ranch. My response is, ‘Well, what if I subdivide it and my kids wish I hadn’t.’”

The Crarys say the easement has not changed the way they operate the ranch. “I hardly know it’s there,” said Dusty.

Dusty is active with the Conservancy’s Rocky Mountain Front



Advisory Committee and is chair of the board of trustees of The Nature Conservancy of Montana.

Is a conservation easement appropriate for every landowner?

Conservation easements are designed to meet the site-specific needs of the individual landowner and land trust. They may not, however, be appropriate for every situation.

Landowners considering an easement should consult with family members, tax and legal advisors, and a land trust representative to determine whether this tool will help accomplish one’s long-term conservation and economic goals.

Can I still sell my property?

Yes. Property with a conservation easement can be bought, sold and inherited. However, the conservation easement is tied to the land and binds all present and future owners to its terms and restrictions.

What will a conservation easement mean for my children?

A conservation easement may reduce estate taxes paid by heirs. Future landowners, including family members, will abide by the terms of

the conservation easement agreement and will continue the relationship with the organization that “holds” the easement. Families should consider the trade-off between immediate tax benefits resulting from reduced property value and permanent restrictions on land use. Professional assistance is available and recommended for families considering this evaluation.

What if the property is owned by more than one person?

All owners of a property must agree to the terms of the conservation easement before it can be legally granted.

In Summary

Conservation easements can provide a creative means for families to deal with succession and estate issues that often plague operations and sometimes lead to land sales to satisfy estate taxes. Proceeds from the sale of, or savings from the donation of an easement, can also provide opportunities for expanding one’s land base.

This new tax law offers the

potential for more families to continue farming and ranching and to keep our precious Montana landscape rural. As land prices continue to rise, the pressures on traditional farm and ranch families are not going to diminish.

With the new provisions in the tax code, a conservation easement may be just the tool you and your ranch have been looking for.

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