

WHO SHOULD CONSIDER GRANTING A CONSERVATION EASEMENT?

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Last month's article addressed what is a conservation easement and how it works. This month's article analyzes who should consider granting a conservation easement. Conservation easements are not for everyone. In fact, there are really only three reasons that a landowner should consider granting a conservation easement.

The first reason is if the landowner wants to preserve land in perpetuity as agricultural or range land. If the landowner knows that their children and likely their grandchildren are going to be farming or ranching the land, then there is no pressing reason to grant a conservation easement. The landowner should talk with their family and see what the next generation intends to do with the land. If their ideas for the land are to keep it in its current use, then a conservation easement is not necessary. However, the landowner may consider a conservation easement if the next generation is not going into farming or ranching, or if the next generation may have different goals for the property, such as developing the property, and the current generation does not want to see this happen. Also, a landowner may consider granting a conservation easement if they have no children and are not certain what is going to happen to the land when they die. This is also a point that should be clearly discussed and addressed with an estate planning attorney as part of a comprehensive estate plan for the landowner.

The second reason that someone may consider granting a conservation easement is if that person is land rich and cash poor. Cattle ranching is not a business in which people typically become rich. And as we have seen with the 2006 e-coli outbreak, even agricultural and row crop use of the land can have its downsides. If a person finds him or herself in a situation where they do not have enough cash to pay their bills, then selling a conservation easement to a land trust may be one alternative to consider. The value of the conservation easement will depend upon various factors such as the quality and current use of the land, the importance of preserving such land, the development potential, how restrictive is the conservation easement, the land trust's funding, and other such issues. However, before granting a conservation easement, the landowner should also consider trying to refinance the land to pay their bills, negotiating with creditors for better repayment terms, borrowing money from relatives, filing for bankruptcy reorganization (in which the landowner may keep the land as part of the reorganization), or other such alternatives. Granting a conservation easement to raise cash is just one of a few different alternatives that a person should consider if they find themselves in this situation.

The third reason to consider granting a conservation easement is for estate tax benefits. The primary concern here is in regards to the current landowner's estate not having enough money to pay the estate taxes when the current generation dies. Less than 50% of all family businesses survive from one generation to the next because of the inability to pay the estate taxes. This typically results in the land being sold when the current generation dies and the family loses the land. In order to avoid this, the landowner needs to do some estate planning in order to have enough funds in order to pay the estate taxes upon their death.

There are several ways in which to raise adequate funds for estate planning purposes. One way is to buy enough life insurance in order to pay the estate taxes. Another way is to grant a conservation easement so as to lower the value of the land upon the landowner's death, which will result in a lower estate tax bill. It may also generate income to pay the estate taxes if the landowner sells a conservation easement to a land trust. A third alternative is to put the land into a family limited partnership and to start gifting small interests in the land to children and grandchildren. A landowner can take discounts for lack of marketability and lack of control in valuing the gifts of such percentage interests. These are only a few of the alternatives that a landowner should consider in doing his or her estate plan. A landowner must meet with an estate planning attorney and draft a careful estate plan to address the estate tax issues that may include some, all of none of these alternatives.

Next month's article will evaluate the benefits and drawbacks of granting a conservation easement.

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