

On Montana's Rocky Mountain Front today, opportunities for public hunting are rapidly declining. Many of the large ranches are closed to public access, especially those with productive wildlife habitat bordering public lands. On many properties, public hunting is no longer considered compatible with the modern ideal of a western lifestyle. It is the role of the hunter to revert this trend by providing alternatives for landowners to rediscover public hunting as a part of the ranching lifestyle. For a number of years now, conservation easements have been popular with landowners and the conservation community for protecting the character of private lands in the West. There exists a rarely used opportunity to link conservation of private lands with public recreation using the tool of conservation easements.

A conservation easement is a legally-binding agreement regarding the transfer of property rights from a landowner to a qualified conservation organization, such as a land trust. To illustrate property rights, land ownership can be thought of as a bundle of rights for use of land and its resources, such as the right to grow crops, graze livestock, harvest timber, mine for minerals, grant public access, as well as the right to subdivide and develop land. By donating a conservation easement, a landowner transfers one or more of these rights to an organization with the objective of protecting the conservation value of land. This donation is given in perpetuity since the easement is permanently attached to the fee title, regardless of ownership. Even though some of the land value is transferred and no longer tradable, full ownership of the land remains with the landowner who may continue to live on the property, sell it, or pass it on to heirs. Besides a strong conservation ethic, tax reliefs are the primary financial incentive for donating an easement. The donation itself is a tax-deductible charitable gift, in value equal to the difference between the value of land before and after the donation, provided the easement is perpetual and donated "exclusively for a conservation purpose."

The Internal Revenue Code defines "conservation purpose" as (1)

the protection of relatively natural habitats or similar ecosystems, (2) the preservation of open space for public benefit (e.g., scenic enjoyment), and (3) the preservation of land for outdoor recreation by the general public. Most conservation easements to date are designed with the objective of protecting natural habitats and open space. The idea of protecting land for its recreation value has received little attention. Yet, it is conceivable that some conservation-minded landowners would be interested in donating an easement for public recreation. IRS regulations specify that in order for an easement to be recognized as such, the property must have the regular opportunity for access to and use of the property. This does not necessarily mean every day, but rather for a substantial number of days per year and there must be something about the property that makes the public want to use it: it must either be attractive or contain resources of educational value. It seems that in Montana, the great demand for viewing and hunting of wildlife on private land would qualify most of the productive lands that are rich with habitats and wildlife.

A conservation easement for public recreation such as hunting could be set up in such a way that the agreement would spell out the environmental conditions necessary to support healthy and productive populations of certain wildlife species. Activities that are compatible with the conservation purpose of public recreation may include: (1) keeping the land in its current agricultural use such as livestock grazing, (2) limiting construction of additional buildings, fences, and roads to areas adjacent to existing developments, and (3) all other uses not specifically specified as incompatible. Inconsistent activities may include: (1) altering significantly the habitat base for certain wildlife species, (2) establishing residential or commercial developments which will result in unsafe and inappropriate hunting, and (3) retaining exclusive landowner access rights. The type and intensity of public recreation that could be sustained on the property would be specified in a recreation management plan. This plan would be developed according to landowner ob-

jectives, ethical hunting considerations, and the existing regulatory framework. Depending on specific circumstances, the plan may restrict access to certain species, limit the number of recreation days, or specify hunting techniques. The details of the easement agreement and recreation plan would become the reference against which compliance by the landowner would be evaluated. For example, given existing habitat conditions, a plan may specify public access to hunt whitetail deer for ten days per season on a property. If for some reason the land is put to an alternative use by the owner to such a degree that it alters or renders habitat unsuitable for deer (e.g., residential housing developments) or imposes restrictions on the type and intensity of hunting, then the landowner would be in violation of the easement agreement.

A conservation easement is currently one of the most innovative approaches to land conservation in the West since it recognizes the social and economic well-being of people who depend on the resources the land provides. By granting an easement in perpetuity, the owner is assured that the land and resource values are protected indefinitely, no matter who owns the property. Besides the feeling of having "done the right thing," a conservation easement can offer substantial financial benefits. Besides securing the conservation value of private lands for habitat and open space, easements may present a viable alternative for integrating public hunting once again into the western lifestyle. Hunters are called into action to develop this alternative for landowners. ▲▲▲



FIELD NOTES

FROM THE TRM RANCH

Public Hunting and Private Lands

An Integration Using Conservation Easements

By Thomas Baumeister - B&C Fellow

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