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Easing In

Donating a conservation easement is an effective way to protect agricultural land from commercial development.

CREATING SUSTAINABLE business and recreational models should be a major concern for everyone who loves horses. Fostering interest among young people is important, but engaging youth is only part of the solution. It's also necessary to guarantee that future generations will have places to ride, compete and raise their horses.

Preserving land for equine pursuits sounds like a simple proposition—keep using the land for horses and don't sell—but the reality is much more complicated. Landowners die, family dynamics change and priorities shift. Land is almost always worth more when used for commercial development than when kept for agriculture, and the temptation to sell for a profit can be strong.

Conservation easements, however, can help protect agricultural land. A conservation easement is a legally binding contract between two parties—the landowner (the “grantor”) and a non-profit land trust organization (the “grantee”)—in which the landowner transfers the right to develop the property to the non-profit. The land trust, in turn, promises never to exploit those rights. Donation of a conservation easement amounts to a guarantee that the land will remain free from commercial development in years to come.

Donation of a conservation easement is not a sale of the property. No transfer of title takes place between the landowner and the land trust, and no limitation on the current uses of the land is created. Property being used for equestrian pursuits when donated still can be used for those activities in the future.

Conservation easements solve some of the concerns associated with potential commercial development of farm property, but not all of them. A significant trade-off, for example, is the diminished value of the land when the possibility of future development is taken away. This is offset to some degree by provisions in the U.S. Tax Code that might allow significant tax breaks for landowners who donate qualifying conservation easements.

Not all agricultural land qualifies, however, and there are significant procedural pitfalls along the way.

The land must have an established “conservation value,” some reason to justify its protection.

Conservation values are defined by law and include land used for outdoor recreation or public education, natural wildlife habitat, farmland or other open spaces if there is significant public benefit to its protection, land protection pursuant to an established government conservation policy and historically important sites. The conservation value of the land forms the basis for the conservation easement, and the agreement between grantor and grantee should include language that protects both the property owner's intent and the conservation value.

Each site and the corresponding conservation values are unique, as is each conservation easement contract, and consultation with attorneys with skilled in the area is essential for both sides. The Internal Revenue Service is paying closer attention to conservation easements due to abuses of the process, and faulty drafting of the agreement or a failure to satisfy strict procedural requirements can be detrimental.

Subsequent steps in the process include a title search to establish that the person seeking to donate the easement has the legal authority to do so; a comprehensive appraisal of the land; and a “baseline documentation report.” The baseline report is an inventory of the physical aspects of the property at the time of the easement and identifies the conservation values of the land.

It also is necessary to determine “conservation easement value,” which is the difference between the highest value/best use of the land (usually commercial development) and the value of the land after the easement is in place. The difference between the two values, which represents the decrease in land value as a result of the easement donation, sets the amount of money that can qualify for a tax deduction.

The process is complicated, time consuming, and often expensive, and the advice of experts is a necessity. A good equine-specific resource is the Equine Land Conservation Resource (elcr.org).

“Financial return in the form of tax deductions is the icing on the cake,” Deb Balliet, CEO of the ELCR said, “but that should never be the only reason to do this. A good candidate for a conservation easement is someone who loves the land and who can't ever see a housing development springing up on the property.” PHJ