



Conservation easements gain a foothold in Valley

By Cynthia Sewell - Idaho Statesman

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Tucker Johnson and his family own 707 acres valued at about \$7 million, and much of it is ripe for development.

But the Johnsons are using an infrequently used land conservation tool that will set aside 50 percent of their land as permanent open space.

Sure, the Johnsons will get a tax break, and the open space would be an appealing draw for future homeowners. But the Johnsons' love of the site and their desire to leave a legacy fueled their decision to put half of the site into a conservation easement. The land can be sold, but it can never be developed.

"It may seem ironic that land development is the driver for land conservation, but it is typically land conversion to development, often without any meaningful conservation, that drives citizens to support open space initiatives or local land trusts," said David Genter, a land conservation specialist based in Montana who is helping the Johnsons craft the conservation easement. The family owns Skyline Development Co.

The Johnsons' land will serve as the focal point of The Cliffs, a planned community atop Hammer Flat that was approved by Ada County last month.

The Johnsons decided to put 356 acres into the conservation easement — a voluntary, legally binding agreement that permanently restricts land use and provides a tax break in return. Of the land in the easement, 250 acres could have been developed while the rest is undevelopable steep slopes.

When Skyline applied to build The Cliffs, the county's planned community ordinance did not require setting aside a specific amount of the development as permanent open space. Later, a new county ordinance was passed requiring planned communities to dedicate at least 10 percent of the development as permanent open space.

That the county requires planned communities to use conservation easements "will likely serve as a significant source of permanently protected open space and habitat in Ada and surrounding counties," Genter said.



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The ins and outs of conservation easements

What is a conservation easement?

A voluntary legal agreement between a landowner and land trust or government agency that permanently limits uses of the land in order to protect its conservation values. It allows the landowners to continue to own and use the land and to sell it or pass it on the heirs. For example, a farmer could give up the right to build homes on his acreage while retaining the right to grow crops.

An easement may apply to just a portion of the property and need not require public access.

"Skyline took a long time in evaluating this property and planning The Cliffs. They considered the uniqueness and special qualities of the site from many perspectives, wishing to preserve the best aspects of this site," Genter said.

The land won't just be preserved, but also "restored to a full sagebrush steppe community, which the area has not seen for a while," Genter said.

Over the decades, grazing and wildfires have destroyed much of the native vegetation on Hammer Flat. Noxious weeds such as cheatgrass and medusahead overrun the site. As part of The Cliffs' conservation program, Skyline will undertake a \$1 million, 15-year habitat restoration project of the land placed in the con-servation easement.

CONSERVATION EASEMENTS GAIN TRACTION IN IDAHO

Conservation easements are becoming more popular across the nation and in Idaho but have rarely been used in the Treasure Valley.

In Idaho, total acres conserved by land trusts increased 61 percent to 58,906 in the past five years, according to the 2005 Land Trust Census published in November.

Nationwide, conserved acreage increased 54 percent to 37 million acres in the same period.

Idaho's marked increase is indicative that land trusts and conservation easements are gaining traction in the Gem State.

The state's decadelong growth boom directly contributed to increased land conservation efforts, Genter said.

"As development pressures increase, so too did the push for land conservation by communities, individuals and foundations," Genter said.

But Idaho's nearly 59,000 conserved acres pales in comparison to Montana's nearly 1 million acres. Several factors created the disparity between the two states Genter said.

For starters, 60 percent of the land area of Montana is privately owned, compared to 37 percent in Idaho, giving Montana a larger pool of private land to conserve, Genter explained.

Montana was "discovered" earlier than Idaho by wealthy outsiders.

"During the late '80s and up to the present, we have seen the market favor ranches as recreational or investment properties. Certainly the Hollywood crowd and Ted Turner get much play, but many individuals of significant means were acquiring large ranches in the West," Genter said.

Montana also has more energy development and mining activity than Idaho.

These two factors — wealthy landowners coveting key agrarian and habitat land tracts and natural resource extraction — "were viewed as threats to agriculture, wildlife and a traditional rural landscape," Genter said. "This brought the agriculture and land conservation communities together to form important relationships and establish the groundwork for using easements to restrict undesired development.

access.

Conservation easements are used to protect all types of land, including farm and ranchland, historical or cultural landscapes, scenic views, streams and rivers, trails, wetlands and wildlife areas.

By donating a conservation easement, landowners could get a tax deduction in return for giving up future development rights on the land.

What are the tax benefits?

A landowner sometimes sells a conservation easement, but usually easements are donated. If the donation benefits the public by permanently protecting important resources, it could qualify as a tax-deductible charitable donation. The amount of the donation is the difference between the land's value with the easement and its value without the easement.

Idaho offers no state tax incentives for conservation easements.

In 2006, President Bush signed into law a two-year provision that significantly enhances the tax benefits for landowners who donate conservation easements in 2007:

- Deduct up to 50 percent of their adjusted gross income in any year (up from 30 percent).
- Deduct up to 100 percent of their adjusted gross income if the majority of that income came from farming, ranching or forestry.
- Continue to carry over unused portions of deductions for as long as 15 years (up from 5 years) after the first year in which the deduction was claimed.

In addition to providing the landowner a tax break, the land stays on the property tax rolls, which is important for cash-strapped rural counties or cities.

How long does a conservation easement last?

Most easements "run with the land," permanently committing the original owner and all subsequent owners to the easement's restrictions and provisions. The easement is recorded at the county records office so that all future owners and lenders will learn about the restrictions when they obtain title reports.

Source: David Genter, Big Sky Land Group

"I think there has historically been a strong tie to the land across much of Montana that played well for conservation and permanent protection that comes with easements," he said. "People see their neighbors do easements and they become familiar and comfortable with them, especially in ag operations."

Genter thinks that as Idahoans become more knowledgeable about conservation easements, they will follow in Montana's footsteps and preserve more privately owned land.

ABOUT CONSERVATION EASEMENTS

Conservation easements are a boon to land-rich, cash-poor ranchers or farmers who don't want to sell their land or have it developed. Many farmers or ranchers can't afford to permanently set aside some of their land. A conservation easement's tax benefits provide an incentive for them to preserve some of their land and continue working the remainder.

The easements also benefit the public, because land with wildlife, or scenic or historic value is permanently preserved.

The land remains private, unless the landowner specifies public access conditions in the agreement, such as during hunting season or on a designated trail.

A landowner may receive a tax deduction for donating a conservation easement.

The amount of the donation is the difference between the land's value with the easement and its value without the easement. For example, a landowner would receive more money by turning a 100-acre farm into a 100-home subdivision, but with a conservation easement, the land is undevelopable and therefore not as valuable.

Federal law considers the decreased value of the land as a charitable contribution. Only a public agency or a nonprofit organization, such as a land trust, may hold a conservation easement to receive the tax benefit.

Idaho has 12 nonprofit land trusts holding its 59,000 acres in conservation easements. The largest is Teton Regional Land Trust in Driggs, which holds more than 20,000 acres.

One of Idaho's newest conservation easements is in Valley County southwest of McCall. Blackhawk Partners, developer of the 1,551-acre Blackhawk planned community, put 152 acres into a conservation easement to create the Blackhawk Wildlife Preserve along a 1.7-mile stretch of the Payette River. The preserve is home to elk, moose, bald eagles and other species, according to the Payette Land Trust, which holds the easement.

The Treasure Valley, with its coveted Foothills, high desert and agricultural land, has very little land preserved via conservation easements — under 250 acres.

"This means the 356-acre easement at The Cliffs will be the largest privately held conservation easement in Ada County," Genter said.

Skyline has not decided who will hold the easement for The Cliffs.

The Land Trust of the Treasure Valley holds most the Valley's easements. Founded in 1996, it works with landowners and community leaders to preserve wetlands, farm land, Foothills and stream habitat.

"We are the one local organization focused solely on open space conservation in the Treasure Valley," said executive director Tim Breuer.

The organization received its first conservation easement in 2001 — the 80-acre Craig farm near Caldwell. Today, the organization holds about 200 acres in conservation easements, including Alta Harris Creek at Harris Ranch in East Boise.

"We are being given a responsibility in perpetuity; that's heavy," Breuer said.

The land trust must monitor the land to ensure the owner is complying with the easement agreement. The land trust also is the designated steward of the land and must care for it — repair fences, control noxious weeds and maintain trails.

Government agencies rarely have the cash to purchase open space, which is being quickly consumed by development, Breuer said. Therefore, public officials, residents and landowners must find creative ways to preserve natural, scenic and recreation lands in the Valley. Conservation easements are another tool, another incentive, to do just that.

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