



Prairie
PONDERings

North Dakota
Natural Resources Trust

Landowners Rights and Future Land Use Big Issues

For many North Dakota farmers and ranchers, their land is their life. They look out their windows and see a landscape that takes their breath away, and their hope is that their children and grandchildren will be able to enjoy the same view for generations to come. In order to preserve that view, or maybe to save their ranch from urban development, many of these landowners enter into conservation easements. But, in North Dakota, a largely conservative state that prides itself on preserving the rights of landowners, those who want to enter into an easement permanently find their path full of hurdles and challenges.

The American Farmland Trust defines conservation easements as “a deed restriction landowners **voluntarily** (emphasis added) place on their property to protect resources such as productive agricultural land, ground and surface water, wildlife habitat, historic sites, or scenic views... They are used by landowners... to authorize a qualified conservation organization or public agency ... to monitor and enforce the restrictions set forth in the agreement...”

Keith Trego, executive director for the North Dakota Natural Resources Trust (Trust) says there are several

Photo courtesy of Ducks Unlimited



reasons landowners enter into conservation easements. The biggest being they want to secure peace of mind over how their land will be used in the future. Another is that with ever-increasing grassland values for real estate development or conversion to cropping, it is difficult for ranchers to compete. “Easements are a tool to help keep the family ranch in the family. They provide income for retiring land debt, adding more land to the family operation, or assisting parents’ retirement so the next generation can take over,” Trego says.

North Dakota is unlike the rest of the country in that it is the only state in the country that restricts the length of land protection easements. In 1977, North Dakota passed a law that limited all easements to 99 years. The reasoning behind this legislation was that there were concerns that the governmental and nonprofit organizations that were the recipients of these easements, might not be good partners with future surface owners. “There was the belief that land should be unencumbered by surface restrictions, not controlled by faceless agencies or former owners who are no longer living. Lawmakers questioned whether that in one point in time one could truly understand what is best for North Dakota in perpetuity,” Trego says. “However, North Dakota is a state that promotes private property rights. It seems hypocritical to say that and yet prohibit landowners from entering into permanent easements if that’s what they want to do. We allow them to develop their property or convert native grassland to cropland, both permanent surface changes, but if they want to keep the land unchanged, we have a law against it. It is a curious public policy position,” Trego says.

The largest and most active opponents of permanent land protection easements are the state’s agricultural groups. A majority of these groups have strong policy positions opposing easements, and even so-called private property rights groups such as the Landowners Association of North Dakota (LAND) continue to oppose these easements. Wes Tossett, a retired farmer from Lansford, is a member of LAND, a statewide organization of farmers who want to preserve the income of the state’s land. Tossett says that LAND is largely against conservation easements because, “we figure wildlife enthusiasts have enough land.

We feel the people of North Dakota take good care of the land, and should be able to do what they want with it, without the restrictions of easements.”

Tossett says the group is mainly against perpetual easements because it is impossible to look into the future and know what that landowner will want at that time. He says landowners who acquire land with easements on it don’t get payment, but are still required to follow the restrictions on the land. “Many of them wish they could buy the land back. Future owners are locked into easements without a choice. However good a grandfather’s intentions may be now, it may not be what his grandson wants 50 years later,” Tossett says.

“The issue of permanent conservation easements has been discussed between ag and conservation groups for more than 30 years,” Trego says. “But framing the easement issue as a point of contention between wildlife and agriculture is a clear strategy to confuse and misstate what this is about. We allow permanent separation of all

manners of land rights, including complete separation of surface and subsurface (like mineral) ownership and give the mineral estate owner dominance besides,” he says. “Ag groups say that land protection easements don’t work and that landowners don’t want or like them, but the data compiled by groups working with individual landowners on conservation and land protection says differently.”

Chuck Peterson is one such landowner. Peterson has had 1,200 acres of native prairie under a 30-year easement for the past two years and would like his easement to be perpetual. “This land has never been plowed, and I’d like it to stay that way,” he says. “I do not want to see it subdivided.”

Peterson describes his land as covered with native grasses and shrubs with coulees running throughout it, and burr oaks and native trees growing across the hilly landscape. “The area is so pretty – something my wife and I want to see preserved. North Dakota is a beautiful state, and as time goes by, more and more people are becoming more focused on getting the most money out of their land as possible instead of preserving it. I think it’s important to preserve native land so future generations can enjoy it.”

Though North Dakota law prohibits state and nonprofit



Photo by Jim Ringelman

groups such as Ducks Unlimited and the Trust from offering permanent conservation easements, landowners who wish to protect their farms and ranches for perpetuity can do so by working with the federal government if their land is located in a priority area for the land protection program. A 1983 U.S. Supreme Court case clarified that North Dakota statute cannot limit easements that the U.S. Fish and Wildlife Service offers and administers. However, funding limits the number of easements that can be offered, so while grass easements covering about 300,000 acres have been purchased, there is currently a waiting list with more than 100 names of North Dakota landowners waiting to be considered for these permanent easements.

With so much interest in these types of programs, it seems only logical that the laws prohibiting them be evaluated. Business and tourism groups like the Theodore Roosevelt Medora Foundation are working with several North Dakota legislators to introduce legislation that would remove such limitations. Rep. George Keiser, one of the bill's sponsors, says that North Dakota is behind other states by having this land protection and property rights limitation. "That doesn't mean that North Dakota is wrong," Keiser says, "but it is important that the legislature debate the issue to determine whether current policy is correct or if adjustments should be made. If we don't introduce the bill, we can't have that debate."

Legislative efforts have been undertaken for several years, but have been unsuccessful thus far. Keiser says that is not surprising, and that it often takes the legislature five or six sessions to fully understand the policy change and the effects it will have on the state.

"North Dakota's aversion to long-term land protection, keeping the land as we found it when the state was settled, is a curious public policy anomaly," Trego observes. "We steadfastly defend the right of the private property owner to put roads, sewer lines, and homes on property, to tear out native sod, to place wind towers, to mine for coal, and to drill for oil and gas, all of which change the land use and land character forever. But, if a family decides to protect their land in its current state, ensuring its long-term use for grassland agriculture, we make it as difficult as possible, limiting their tax and estate planning options and making the federal government the only game in town. This is especially ironic in light of the fact that the original controversy that spawned our current restrictive land protection laws was a fight with the federal government. It is the classic 'stub your toe – kick your

dog' reaction – and it might be time we apply first aid to the toe in a more beneficial manner," he says.

Trego continues, "Land protection opponents have done well with the strategy of framing easement limitations as a "fight" between agriculture and conservation, with opponents claiming to be protecting the rights of private property owners from... themselves, apparently. But a new day in the land protection debate has arisen. Forward-thinking groups like the Theodore Roosevelt Medora Foundation, and private landowners like Chuck Peterson, are interested in helping legislators realize there are economic and socially responsible reasons to protect land long term. Keeping a part of North Dakota in its native state – the way our ancestors found it – might just be a good thing for our future. The real issue is who gets to decide. If one truly believes in private property rights, then it would seem the private property owner might enjoy that right. If you believe, as some North Dakota groups and individuals do, that long-term land protection has no place in our future and private landowners need to be protected from 'themselves' with restrictive laws and public policy, then the North Dakota version of private property rights might just be characterized as, 'I get to tell you what you can do with your land.'"

Trego concludes, "There are a lot of important issues in North Dakota, but none more important than our land, its character, its future use, and what it means to current and future North Dakotans. It will be an interesting legislative debate, as it should be."

Photo by Dave Afton

