CONSERVATION EASEMENTS
10 THINGS A REAL ESTATE AGENT SHOULD KNOW

Introduction

Every day, a landowner talks to a land trust about conserving their property. Unlike public land conservation, private land conservation is based on market-based real property transactions, which means real estate agents are usually involved.

In the last 20 years, land trusts have worked with private landowners to conserve over 500,000 acres in Alberta, with conservation easements being one of the key tools.

Yet most real estate agents have never heard of a conservation easement. And for those that have, it was generally a surprise – sometimes an unwelcome one.

This Explainer contains 10 things that real estate agents should know about conservation easements to best serve their clients' needs.

THE CONSERVATION EASEMENT EXPLAINER SERIES

This document is part of a series of 'Explainer' documents describing various aspects of the conservation easement tool in plain language.

To see other Conservation Easement Explainers, as well as much more information, go to the: Alberta Conservation Easement Resource Centre

THE CORVUS CENTRE FOR CONSERVATION POLICY

The **Corvus Centre for Conservation Policy** is a Canadian nature-conservation charity based in Calgary, Alberta, Canada

Corvus works with government, NGOs, and others to develop and implement nature-positive policy

1 Conservation easements help landowners protect their land's conservation values

A conservation easement is a legal agreement between a landowner and a qualified organization agreeing to certain land use restrictions in favour of the environmental, scenic, and/or agricultural values of the land.

Conservation easements are enabled under the Alberta Land Stewardship Act, and are designed to help private landowners achieve their conservation goals for the property (the Act enables conservation easements for environmental, scenic, or agricultural land conservation purposes).

Conservation realty firms exist in the U.S. solely to connect buyers to properties with conservation easements.

3 Landowners are fully compensated for the grant of the easement

The landowner granting the conservation easement receives full compensation for the financial loss due to the easement. A qualified appraiser values the property without the easement, then applies the same methods assuming the easement existed. The difference is the value of the easement. That compensation takes the form of a charitable tax receipt, cash payment, or combination of the two.

It's important to recognize that the financial value is not linked to the conservation value; rather it is based on the decrease in the Fair Market Value.

2 A conservation easement runs with the title of the land

A conservation easement is registered on the title of the land and runs with the land regardless of future ownership. The tool was designed to be perpetual, meaning the agreement has no predefined end point. (though some agricultural producer groups press conservation groups to only apply them temporarily).

The placement of an easement does not affect the landowner's ability to sell, Will, gift, or otherwise dispose of the property any time they wish.

4 A conservation easement does not grant the public access

After the easement is granted, it is still up to the landowner to decide if they want to offer access to the public, and if so, how they want to do that.

Nothing in the conservation easement enabling legislation requires otherwise, and holders of conservation easements are generally neutral on the topic.

The holder of the easement does gain the right of access to monitor and enforce the easement, but the terms of that can happen are laid out in advance in the agreement.

Other kinds of access that are not part of the landowner's rights – such as entry to access subsurface rights – are not affected by the easement.

5 A conservation easement does not have to cover an entire parcel

A conservation easement can be placed on an entire parcel or only a portion of it, which landowners can determined in negotiation with a land trust. In many cases, restrictions can only apply to certain parts of the parcel, or apply at different intensities.

If negotiated and determined beforehand, landowners can identify a future building site for a house so long as the conservation values are not unduly affected.

Landowners can also grant conservation easements on one parcel at a time, maximizing the tax benefits over time, or accommodating the needs of a family of agricultural operators.

6 Only certain, specified uses of the land are restricted

A conservation easement restricts certain land uses, but anything beyond what the agreement speaks to is an opportunity retained by the landowner.

The most common restrictions are future subdivision, drainage, gravel extraction, and limitations on future development. For example, landowners can continue to hunt and fish on the property. Outbuildings that support existing agricultural operations are generally allowed, as well.

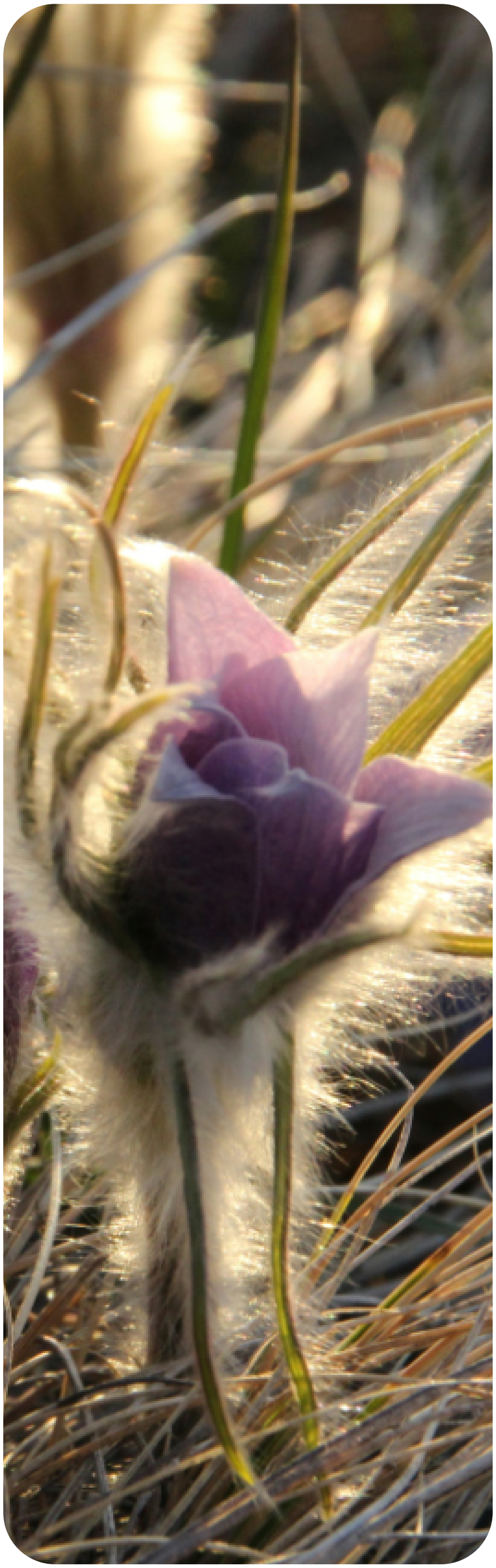
It is important to note that an easement cannot prevent oil and gas activity as that relates to the subsurface rights a landowner does not hold.

7 Conservation easements can only be removed in very specific circumstances

A perpetual conservation easement is not intended to be removed, and is therefore hard to terminate.

The legislation gives the Minister the power to remove a conservation easement if doing so is in the public interest (no Minister has done so). The easement can also be terminated by agreement of the landowner and holder of the conservation easement. However, the easement holder would shed their social licence to operate were they to do so (again, no land trust has done so).

However, changes that enhance or do not impair the land's conservation values happen all the time, as the land and land- management best practices are constantly changing.



8 Over 90% of conservation easements are on active agricultural operations

Nothing prevents a landowner from generating revenue off of land subject to a conservation easement, so long as the easement terms are observed.

If an agricultural land management regime has kept a property in a state that makes a conservation easement an option, maintaining that regime makes the most sense. For that reason over 90% of conservation easements are on active farms and ranches.

In fact, the tax benefits from donating a conservation easement can become a critical part of a farm family's succession plan.

9 Conservation easements are 'stewarded' by the easement holder

After the conservation easement is placed on a parcel, the easement holder begins a perpetual process of easement 'stewardship'. This involves regularly monitoring (usually once/year), identifying and resolving infractions of the agreement, and even working with the landowner to identify other opportunities.

Well over 90% of infractions are unintentional and readily resolved. In extreme cases, enforcement can involve stop-work orders, suits, and all the other remedies available to parties to a legal contract.

10 There are 11 land trusts and several municipalities that hold easements

Most conservation easements are held by a land trust – a non-profit, charitable, conservation organization with a mandate to hold land or easements for conservation. Alberta's 11 active land trusts are:

- Alberta Farmland Trust
- Alberta Conservation Association
- Alberta Wildlife Federation
- Crooked Creek Conservancy Society of Athabasca
- Ducks Unlimited Canada - Alberta
- Edmonton and Area Land Trust
- Foothills Land Trust
- Legacy Land Trust Society
- Nature Conservancy of Canada - Alberta
- Southern Alberta Land Trust Society
- Western Sky Land Trust

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