



MONTANA ENVIRONMENTAL INFORMATION CENTER

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SB 391 ~ ALLOWING CONSERVATION EASEMENTS ON SCHOOL TRUST LANDS

Bill Summary: SB 391 allows conservation easements to be granted on all school trust lands.

Why is SB 391 Needed?

Currently easements for "conservation purposes" can only be granted on school trust lands under 3 limited circumstances—to Fish, Wildlife and Parks, for Owen Sowerwine Natural Area, and for a couple parcels of land held by The Nature Conservancy. If new circumstances arise where a conservation easement seems desirable, the statute has to be amended through the legislative process. Rather than requiring an amendment to the statute each time a new circumstance arises, SB 391 takes off these restrictions and allows conservation easements on all school trust lands.

What "New" Circumstance has Arisen that May Warrant a Conservation Easement?

The Whitefish/State Trust Lands Neighborhood Plan (Neighborhood Plan) is a land-use plan for the 13,000-plus acres of State School Trust Land surrounding the community of Whitefish in Flathead County. The Neighborhood Plan recommends future land uses for these trust lands. The goal of this plan has been to work with DNRC to provide increased revenue for the beneficiaries of the school trusts while maintaining the economic, environmental, and cultural vitality of Whitefish and the surrounding areas.

In order to meet the trust and community objectives in the Whitefish Neighborhood Plan, the purchase of one or more conservation easements is desirable. In the Neighborhood Plan, conservation easements on trust lands would preserve public access where it has historically existed or is planned and, in most cases, traditional forestry and recreational management would continue. A conservation easement could also be structured to reserve a few carefully selected homesites.

How Do Conservation Easements Work?

In general, a conservation easement is a permanent deed restriction that restricts future development on land with recreation, public, scenic, or wildlife qualities. Under Montana law, conservation easements may only be held by nonprofit land trusts or by public bodies, as defined by 76-6-104(4) MCA.

How Would the Value of a Conservation Easement be Established?

By law, DNRC and the Land Board are required to get full market value for the sale of any interest in school trust lands. The value of the easement is determined by an independent appraisal, with the value of the easement representing the difference between the full market value of the land and the value of the same land with the restrictions in place. Typically, easement values vary between 30 and 70 percent of full market value, although values could be higher in some instances. A conservation easement is generally granted to a nonprofit land trust or a government agency whose job it is to

see that the terms of the deed restriction are not violated. In developing, selling and purchasing conservation easements, each one is different depending upon site-specific circumstances. Through negotiations a price will be determined for full market value. In the end, the Land Board and DNRC would have to determine whether sufficient value is being generated from the proposed transaction.

Reasons to Allow Conservation Easements on School Trust Lands

- ◆ If a conservation easement was purchased on school trust land, the public would get to examine and comment on that agreement to see how traditional uses are affected before the easement was finalized.
- ◆ The money raised from the purchase of conservation easements on school trust lands is deposited in a non-distributable, permanent trust, from which DNRC would gain a significant amount of revenue. The money invested from the purchase of a conservation easement plus the money derived from annual leases or licenses can make traditional uses more financially lucrative for the schools.
- ◆ School trust lands are scattered throughout the state in a checkerboard fashion. The Land Board almost never allows the sale of school trust lands.
- ◆ The purpose of school trust lands is to provide income for the state school trust fund. This is generally done by charging grazing fees, stumpage for timber, oil and gas leases, and even charging for recreational use.
- ◆ Sometimes the location of school trust land may cause problems with the activities on adjacent properties. For example, when the state lands lies within a Wildlife Management Area, an income-producing activity might not be compatible with the land being used as elk habitat. Therefore, by allowing a conservation easement to be purchased on the property, FWP would buy a conservation easement to use for their purpose, while reimbursing the school trust fund. Initially this became an issue on the Blackfoot-Clearwater Wildlife Management Area near Seeley Lake where a proposal to sell recreational cabin sites. By allowing FWP to buy the conservation easement, DNRC can fulfill its mandate to maximize revenue on state lands, and FWP can fulfill its mission to manager wildlife habitat.
- ◆ Conservation easements preserve land without the outright purchase of land.
- ◆ Agreements are negotiated with willing landowners—DNRC and the Land Board would only allow conservation easement in the best interest of the school trust.
- ◆ Conservation easements allow the land to be protected from development, while preserving traditional land uses, such as ranching and farming.
- ◆ There are very few cases where this will be used, but it is a needed tool.