

Northern Fergus County's "Negative Easement Regarding Bison"

The sale of the PN Ranch spurred on much discussion over the last year, and from that a group of ranchers and farmers in Northern Fergus County decided to be proactive and protect their property and the economic well-being of their communities from the threat of bison.

We started with a panel discussion in October where the pros and cons of different options were presented. Zoning was determined impractical. Conservation Easements through the Montana Land Reliance are for perpetuity, which most landowners were uncomfortable with. At that point we settled on a covenant, but after learning more about it, realized a covenant would require the formation of an association. We were looking for a simple document, that once recorded, served its purpose and didn't require further attention.

Our attorney came up with the idea of a negative easement. None of us were familiar with the term, negative easement, but if you think of a typical easement as saying you **will** do something positive (for example, allow access across a corner of your land), for the benefit of your neighbor; conversely, a negative easement means you **won't** do something (run bison on your land), for the benefit of your neighbor.

Initially, each landowner (Grantor), was to grant a negative easement to the other participating landowners (Grantees). Once we realized what a great response we were having, we realized it wasn't practical or necessary to record 50 or 70, or however many individual easements, all saying the same thing. It would have been very cumbersome to record and a nightmare for title companies. At that point, we enlisted the advice of an attorney again and ended up with a single document, which is mutually reciprocal. In other words, each landowner is both the grantor (conveying the benefit) and the grantee (recipient of the benefit).

It's a fairly simple document, consisting of the language of the negative easement, about two pages, all the landowners' legal descriptions, and notarized signatures. For absentee landowners, we had a one-time power of attorney developed. We chose to establish a 20 year sunset, but landowners can elect to renew their easement for another period upon reaching the sunset date. We thought a visual would be helpful, so came up with a map from the County Ownership Maps and as people committed to the easement they colored their property in. The enthusiasm in building those acres was phenomenal! Time became an issue with calving season soon upon us, so we set a deadline, or could have included more landowners.

The purpose of the negative easement is three fold:

- * To protect the private property of current landowners and future generations from the impact of plans being developed by organizations and agencies to establish bison herds in north central Montana.

- * To keep large tracts of land from being blocked up and dedicated to bison restoration, thereby keeping landowners on the land and livelihoods intact.

- * To demonstrate the desire and resolve of landowners and their communities to pull together to protect their property from the threat of bison and to preclude north central Montana from becoming a multimillion acre prairie reserve....a concept that would displace many families and eliminate a flourishing cattle industry.

Good Luck, please let us know if we can be of any help!

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