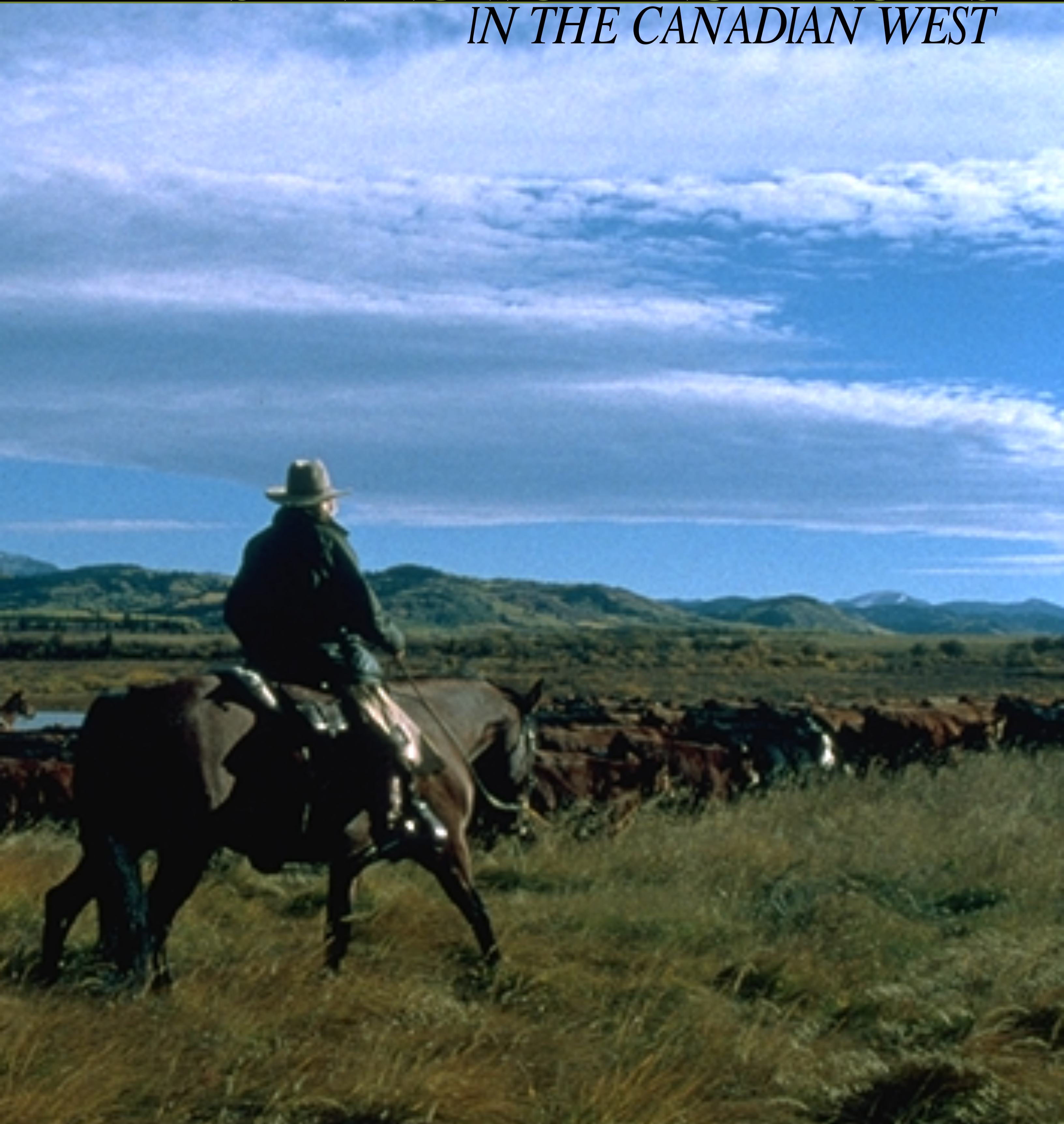
PRESERVING WORKING RANCHES
IN THE CANADIAN WEST

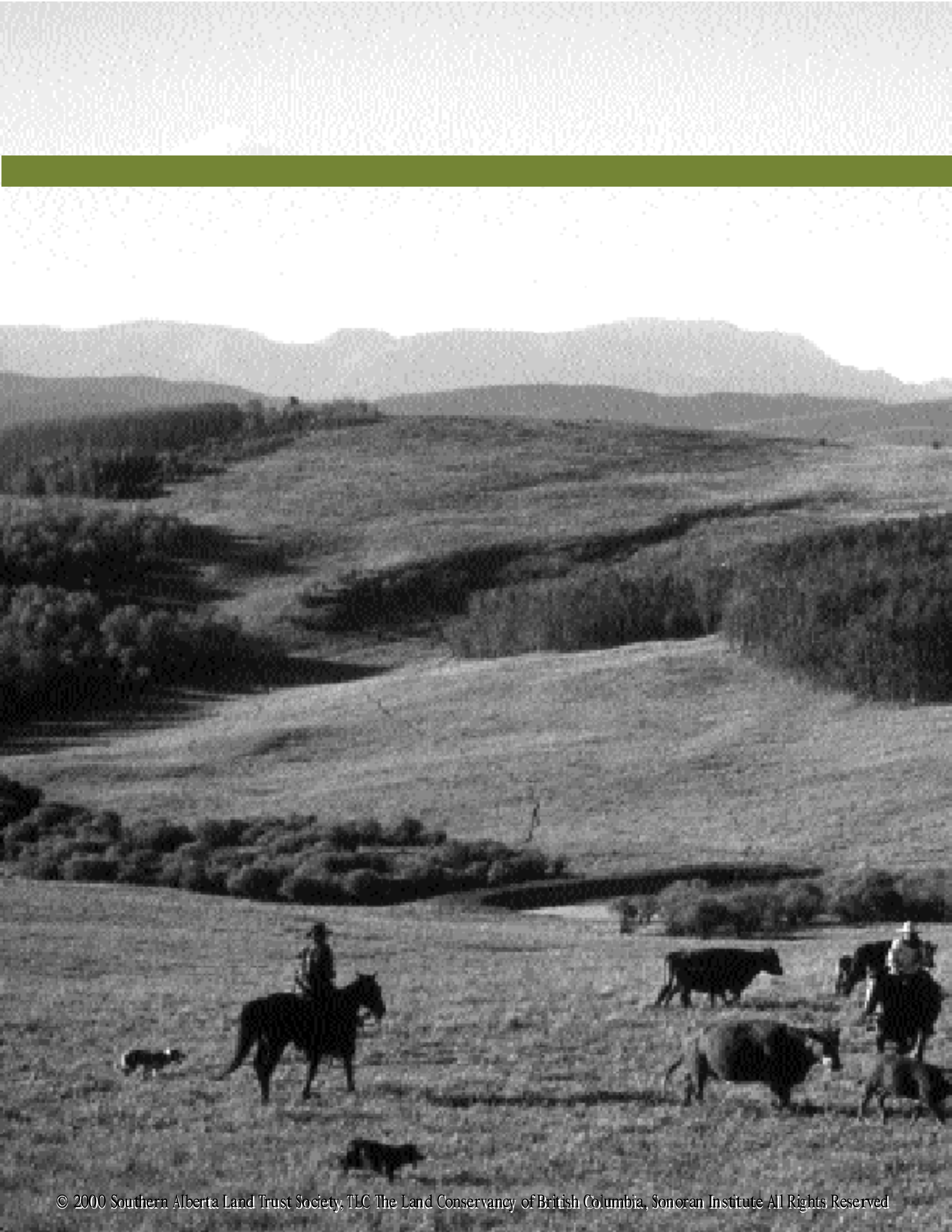


The ranchers who will survive in today's West are the individuals who Wallace Stegner called "stickers." They are the ones who are open to working with their neighbours and adapting to the changing economics and land-use patterns that are shaping the West. Seizing new opportunities is at the heart of their approach. As prominent stewards of the West, tomorrow's ranchers must be ready to use all of the private land tools at their disposal: collaborative planning, conservation easements, estate planning, limited development, and others.

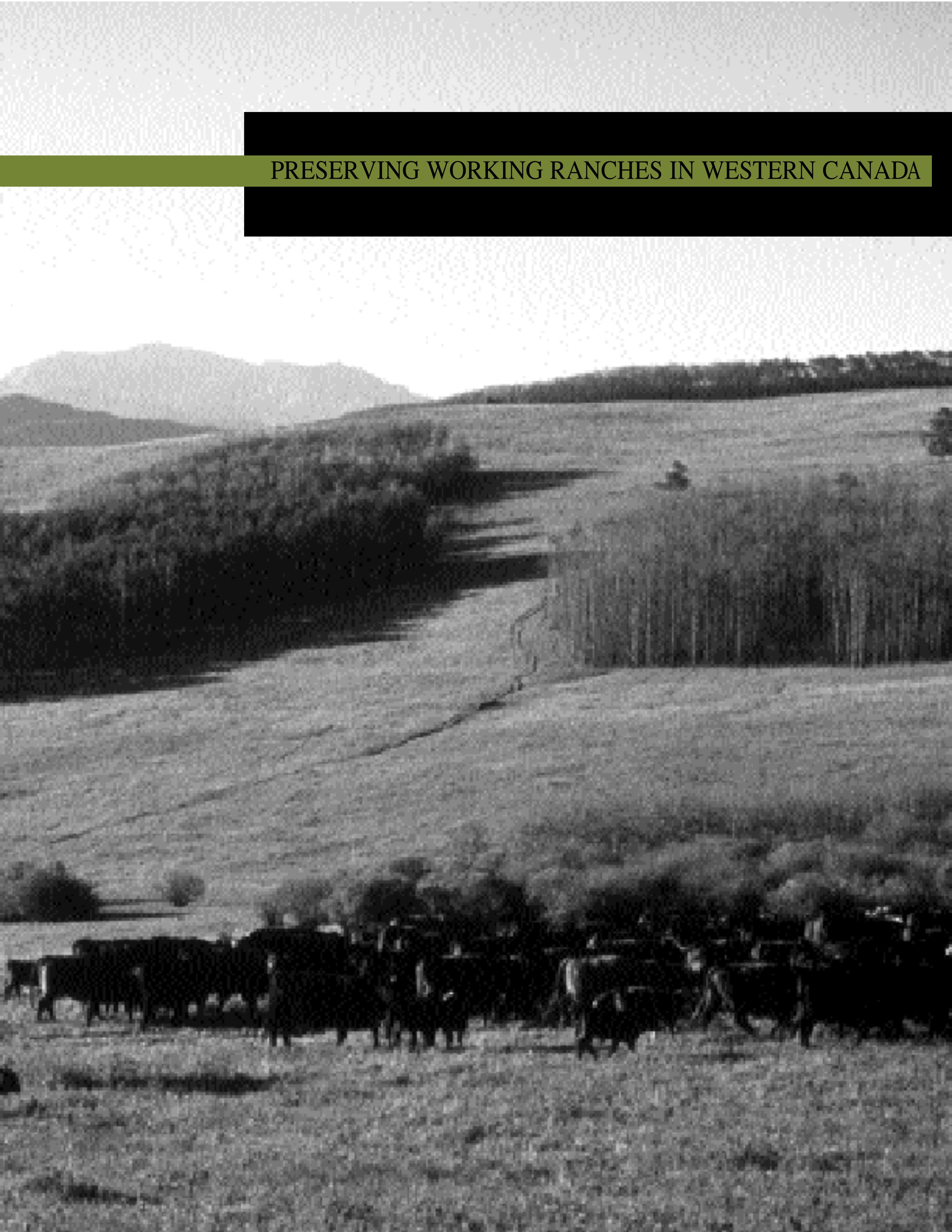
- Luther Propst
The Sonoran Institute

PRESERVING WORKING RANCHES IN THE CANADIAN WEST

Edited by Guy Greenaway, Southern Alberta Land Trust Society - June 2000



PRESERVING WORKING RANCHES IN WESTERN CANADA



ABOUT THE PARTNERS

This guidebook was a joint effort between the Southern Alberta Land Trust Society, The Land Conservancy of British Columbia, and the Sonoran Institute.

The Southern Alberta Land Trust Society (SALTS). SALTS is a non-profit charitable organization which is community-based, rancher-driven and dedicated to preserving the ecological and agricultural integrity of Southern Alberta's foothills and prairie regions.

SALTS believes lasting conservation solutions must recognize that southern Alberta's native landscapes are important for their productive capacity, natural diversity, scenic beauty, and cultural significance. Those solutions will come through communities empowered to create and implement their vision, and SALTS works to provide those people with the tools needed to do so.

SALTS' work focuses on improving opportunities for landowners to maintain economically and ecologically sustainable ranching operations. This includes providing long-term protection to their land's natural and productive values through the use of conservation easements and other tools; supporting landowners in maintaining their ranch through succeeding generations by providing assistance in family business succession planning; increasing landowner access to information to aid in land stewardship; and improving public awareness of the contributions of rangelands to the quality of life of all Albertans. All of SALTS' work is done in close association with landowners and like-minded agencies, organizations, and institutions. This collaboration is designed to improve land conservation mechanisms and to enhance understanding and dialogue between various natural resource groups. For more information, please contact:

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The Land Conservancy of British Columbia (TLC). The Land Conservancy of B.C., a membership-based charity, independent of government, is dedicated to preserving biological diversity through protecting ecologically significant natural areas, places of special beauty, cultural, heritage and educational interest.

Our Interior Grasslands and Forests Campaign is a long-term effort to conserve key areas of British Columbia's interior ecosystems through cooperation with private landowners. Because Canada loses thousands of acres each year of productive rangeland to alternative uses our focus has been on grasslands. Conversions are impacting both industry and biodiversity – changing the open landscapes shared by cattle and wildlife forever.

TLC has been working actively with BC's ranchers, exploring options to allow the environmental community and industry members to work cooperatively in maintaining ranching operations in the province. Of key importance to both interests is a strategy to address pressures that are forcing ranchers to sell for development.

There are a variety of mechanisms that TLC utilizes in its efforts to protect land. TLC holds conservation covenants, and purchases properties and other interests in land. Where land is held by TLC it can be leased to a rancher, managed by the trust, or – where it fits the wishes of the landowner – leased to another agency for management. Where TLC retains management, long-term stewardship is provided through efforts of staff, volunteers and members. TLC also encourages owners to conserve natural, historical, scenic and scientific values through stewardship training programs.

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The Sonoran Institute. The Sonoran Institute (SI) is a non-profit organization dedicated to promoting community-based strategies that preserve the ecological integrity of protected lands, while at the same time meeting the economic aspirations of adjoining landowners and communities. SI is committed to testing a wide range of approaches to community-based conservation, and adapting these approaches based on real experiences. The Institute is also dedicated to widely disseminating both its findings and the tools it develops. SI operates in western North America, with offices in Tucson, Arizona and Bozeman, Montana.

Protecting agricultural landscapes has become a focus for the Institute as the loss of farm and ranch land has accelerated in recent years. SI recently launched the Working Landscapes Program, which seeks to foster the ecological health and financial viability of agricultural landscapes in western North America. By researching trends that affect ranching and by developing innovative conservation tools to respond to the challenges, the Working Landscapes Program assists ranch communities in pursuing long-term land protection and improved land stewardship. The Institute recently released a new publication – The New Frontiers of Ranching: Business Diversification and Land Stewardship – designed to help ranchers diversify their income as a way to improve economic vitality and resource stewardship. For more information, please contact:

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The Southern Alberta Land Trust Society (SALTS) and The Land Conservancy of British Columbia wish to thank the Canada Trust Friends of the Environment Foundation, the Real Estate Foundation of British Columbia and the Sonoran Institute for the generous funding which made the Canadian version of this guidebook possible.

The original, American version was created through the hard work of the Sonoran Institute, and the generous support of the W.K. Kellogg Foundation and the National Fish and Wildlife Foundation.

ACKNOWLEDGEMENTS – *"We're just revising an existing booklet – how hard could that be?"*

I don't know if I ever actually said it out loud, but I was foolish enough in the beginning to have thoughts along those lines. As Murphy's Law ("whatever can go wrong will go wrong") repeatedly flexed its muscle, I came to depend more and more on people who were already contributing in spades to creating this guidebook. Without their incredible contributions, Preserving Working Ranches in the Canadian West would still just be a really good idea that hadn't happened yet.

First and foremost, I want to acknowledge the Sonoran Institute for so willingly making the original American version of this booklet available to be used as a template and source of information. The credit for so much of the useful structure and thought in this book goes to Liz Rosan, the editor of the original version, and the team of contributing writers she collected. Ben Alexander, the director of the Sonoran Institute's Working Landscapes Program has been a consistent and energetic source of help and direction.

Knowing when the Canadian situation difered from the American, and identifying the tools unique to Canada was a tricky and evolving process. There were a number of professionals who provided expertise, and who guided me through the changes in the federal tax law as it evolved during the production of this booklet. Most notable is Cindy Rajan of Ernst & Young in Calgary, who took the lead on re-writing Chapter 3 and Appendix A, and her colleagues Siân Stephenson, and Yvette Kroeker. I'm also indebted to Dean Gallimore of KPMG in Lethbridge and to Patricia Hubbard, the Southern Alberta Land Trust Society's Tax and Succession Planning Coordinator who provided regular feedback on the technical tax and estate planning issues, and to Garry Bradshaw who provided valuable real world experience.

Creation of the booklet has been very much a joint effort, and has depended on the constant contributions of my colleagues at the Southern Alberta Land Trust Society. As he does with al things, Glenn Pauley, SALTS' Executive Director, provided vision, direction and moral support. Though new to the team, Patricia Hubbard contributed quickly and enthusiastically. Tracy Lee's help at the end collecting Canadian examples to sprinkle throughout the booklet was invaluable, and helped push us the final distance to completion. Our partners in the project, Bill Turner and Nichola Gerts at The Land Conservancy of British Columbia, provided information and examples relevant to the BC experience. Several people made themselves available as resources and reviewers, including Sue Michalsky and Kim Cunningham-Good with The Nature Conservancy of Canada, Norman Simmons with SALTS, and Michael Hansen at Rocky Mountain Elk Foundation.

A guidebook such as this depends heavily on the creative talents of numerous people. Kim Taylor of Slidin' U Photography has been a gifted and giving contributor to all SALTS projects right from the start, as has sketch artist Dave Maldaner of Winding Road Legacy Art. Rob Kershaw of Keh 2 Design, the booklet's designer, has given as much in patience as he has in ability. Other photographers on whom we depended were Gordon Cartwright, Robert Kershaw, Lorne Fitch, Wilbur Tripp, Barabara Van Cleve and Jay Dussard.

It can be a very personal thing to tel your story, especially in a publication that wil be distributed widely. However, the lifeblood of a guidebook like this is the stories of real ranchers, and the problems and solutions they were a part of. I am particularly grateful to the ranchers who were willing to tell their story here to help other ranchers trying to preserve their working ranch: Janet Main, Charlie Straessle and Mac Main at the MX Ranch; Jill Brown-John at the Black Creek Ranch; and Zach and Patty Wirth at the Rocking Z Ranch.

And finally, "Preserving Working Ranches in the Canadian West" could not have been produced without the generous financial support of the Canada Trust Friends of the Environment Foundation, the Real Estate Foundation of British Columbia and the Sonoran Institute.

Guy Greenaway
Southern Alberta Land Trust Society

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PREFACE: RANCHING IN A CHANGING WEST

Every four minutes an acre of agricultural land in Colorado is converted to development.{1} Numbers like this reveal the impact of over three million Americans relocating from urban areas to the rural Rocky Mountain West in the past two decades. In the wake of this change, more and more ranchers are abandoning operations because of rural subdivision, attractive offers from developers, burdensome taxes on death, and the increasingly high cost of buying out family members.

Sound familiar? The Sonoran Institute has watched these trends develop across the American West: the conversion of working ranches into small tracts of recreational and residential homes, creating serious social, ecological, and economic problems. According to our friends and colleagues in Canada, these trends are also developing in Canada. For Canadian ranchers, looking at the American West may be like looking into a crystal ball, and seeing a decade or two into the future.

What do we lose when a working ranching landscape is carved up into 40-acre ranchettes? For the individual rancher, it is often a personal tragedy. Often, generations of a family's work is lost. For society in general, we lose the wide open spaces, the pure uncluttered sweep of nature that defines the North American West. We also lose the viability of the agricultural economy that is the lifeblood of many rural communities, that is an essential element of the West's sense of place and neighbourliness, and that is the reason the people who live there want to stay and so many others want to move there.

Piecemeal subdivision of working ranch landscapes also threatens the viability of dynamic ecosystems. The heart of most ranches is precisely the land that's most sought after for development: open rolling grasslands, mountain valleys and scenic riparian areas. With subdivisions quickly replacing large, intact ranchlands, the most productive wildlife habitat is fragmented, water use increases dramatically, and natural forces that shape the landscape are suppressed. Most important, the relationship between humans and land is altered. On subdivided land, humans no longer enter into an active, living relationship with the natural processes of the land. They are no longer stewards of the land but rather its temporary tenants.

Along with accelerating changes in land use, however, there has been an increase in the number of tools available to Canadian ranchers to conserve their working ranches. Almost all provinces and territories now have conservation easement legislation. Changes in the 2000 federal budget have made the donation of conservation easements even more financially advantageous. A growing number of financial planners are familiar with the estate planning tools that can help ranchers pass land on as viable agricultural units to heirs or other operators. And landowners are setting up land trusts and community associations to steer land conservation in their region.

The ranchers who will survive in today's West are the individuals who Wallace Stegner called "stickers." They are the ones who are open to working with

their neighbours and adapting to the changing economics and land-use patterns that are shaping the West. Seizing new opportunities is at the heart of their approach. As prominent stewards of the West, tomorrow's ranchers must be ready to use all of the private land tools at their disposal: collaborative planning, conservation easements, estate planning, limited development, and others.

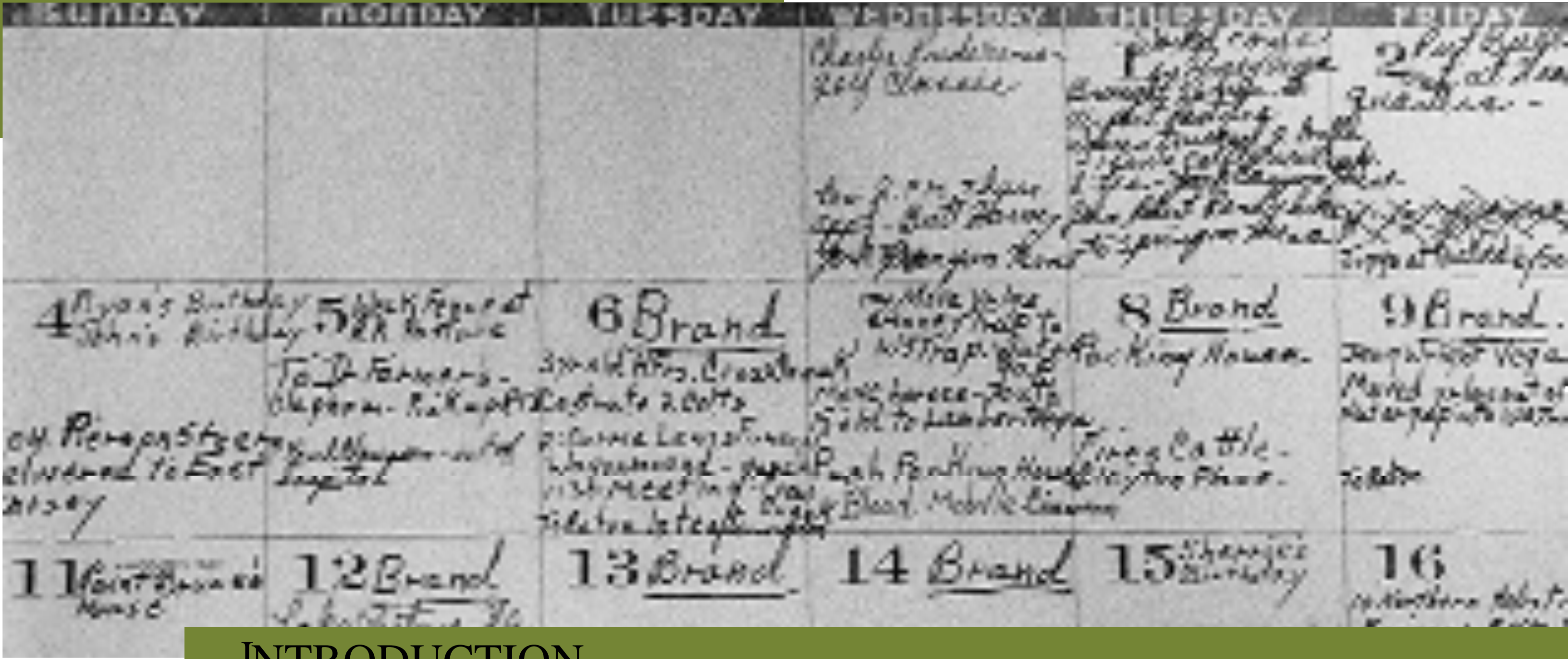
In light of increasing pressures facing western communities in the United States, the Sonoran Institute developed a guidebook – Preserving Working Ranches in the West – to provide ranchers with tools that help stem the fragmentation of ranchlands and rural communities, diversify ranching operations, and maintain long-term family ownership of agricultural lands. This guidebook presented a variety of voluntary options that American ranchers use to preserve their land and meet their financial and ownership goals. As interest in this publication grew in Canada, we worked with the Southern Alberta Land Trust Society and The Land Conservancy of British Columbia to revise that guidebook to reflect the particular situation in Canada, and create Preserving Working Ranches in the Canadian West.

Looking at the American situation is both a warning and a sign of hope. While Canadian ranchers can expect the same sort of dramatic land use changes driven by recreational and residential development, they can also benefit from lessons learned in the United States where more ranchers have been grappling with these challenges.

Today ranchers are increasingly discovering that they don't have to compromise their property rights, financial status, health of the land, or quality of life to stay in business. This has become a reality because the list of options for marketing all the values ranches provide is becoming longer, more flexible, and more diverse.

Most encouraging of all is the fact that some of the same people who once were fighting to remove ranchers from the land are now working to broaden those options. More and more people are recognizing that we all lose when a ranch dies. Ranchers, environmentalists, range managers, and others are forging new ground to facilitate change towards the common goal of sustaining ranching as a way to maintain healthy ecosystems. This new consensus recognizes that preserving working ranches in the Canadian west depends on securing long-term land tenure based on cooperation and good stewardship.

Luther Propst
Executive Director, Sonoran Institute
Tucson, Arizona
(The Sonoran Institute published the original Preserving Working Ranches in the West)



INTRODUCTION

Change is like a bull. That bull is a vital part of your ranch, but you don't want to turn your back on him. And you always want to see what direction he is coming from … especially if he is coming fast. You may want to move him in a particular direction; you may want to let him just go by and work around him. But if you don't see him coming, you don't get a chance to make that choice. You don't get a chance to plan.

The Preserving Working Ranches in the Canadian West guidebook is designed to help you plan for the inevitable changes moving across the ranching landscape. The goal is to make sure Canadian ranchers have the tools they need to stay out in front of those changes – making those changes conform to their vision for their community, and not the other way round.

A growing number of tools, examples and resources are available to Canadian ranchers today – from conservation tools to estate planning mechanisms to local land trusts. In the United States, with their more numerous population, pressures and jurisdictions, the greater need has given birth to a range of inventions, and we can learn a great deal from the solutions they have devised to their dilemmas. For that reason, several American examples were retained for this guidebook.

Each chapter in this book helps you create a strategy for designing the future you want for your ranch. Chapter 1, Planning for Your Ranch's Future, is a road map, steering you in the direction you want to go. If you are interested in protecting your land from subdivision, see Chapter 2, Conservation Easements (Covenants, Agreements): Protecting Your Ranch While Retaining Ownership. If you want to ensure your ranch is passed to a new generation as working unit, refer to Chapter 3, Thinking Ahead with a Succession Plan. Options that allow you to generate additional income and continue ranching are described in Chapter 4, Selling an Interest in Your Land. And a number of examples of ranchers working together to save individual ranches and rural communities are highlighted in Chapter 5, Working Together to Stay in Business. A glossary at the end of the booklet highlights several of the important terms used throughout. Most of the options described in this guidebook, like conservation easements and limited development, promote continued private ownership of land. Each option can be tailored to the unique circumstances facing a particular landowner.

It is clear that the driving force behind ranch conservation will always be the rancher. A land trust that can hold conservation easements, for example, depends on landowners who are willing to grant them. And a single easement will accomplish relatively little in the long run compared with a group of landowners who come together cooperatively to map out the future for their community.

1 PLANNING FOR YOUR RANCH'S FUTURE

The best way to predict the future … is to plan it.

Whether you have three hundred cows or five thousand, or whether your family has worked on your land for only a decade or for more than a century, the time to start planning is now. By creating a long-term plan for your ranch, you can transform this overwhelming task into an experience that allows you to take control of your future.

As you read through this book, we encourage you to consider which options will best enable you to protect and retain your working ranch, while at the same time meet your stewardship and financial goals. The following questions and responses should help you assess your situation and help you initiate this planning process.

Future Ownership and Control of Your Land

• Can you keep the ranch in the family and not lock your kids into an untenable ownership situation? Can you ensure that family members will be able to continue ranching?

Many owners choose not to take any estate planning action because they fear that it will limit ownership rights for their kids. Having no plan, however, is often more restrictive and harmful than mapping out a long-term plan for your ranch. You have a number of tools at your disposal, including conservation easements (covenants, agreements), limited development, and purchase of development rights, to create a flexible plan that protects the agricultural land base and your ownership rights (Chapters 2 and 4). Many of these tools provide financial compensation either by reducing taxes or generating revenue. Increasingly, estate planning professionals are attuned to these innovative land planning strategies that can be coupled with traditional estate planning methods (Chapter 3).

The Financial Benefits of Protecting Your Land

• What tax benefits will you receive by protecting your ranch?

Protecting your ranch's ecological or open space values can offer significant financial benefits. With taxes on capital gains based on the 'fair market value' rather than the agricultural value of your property, you may face a significant tax bill when you come to dispose of (i.e., sell or transfer) your property. Conservation easements (covenants, agreements) can be a valuable strategy for yielding substantial income tax savings. Appropriate combinations of estate planning tools, such as family farm corporations and partnerships, family trusts, and capital gains exemptions, enable you to tailor a plan that meets your particular needs (Chapter 3).

• Can you protect your land and still allow for future development?

Conservation easements (covenants, agreements) can often be structured to allow for limited development that protects your land's agricultural uses and natural resources while providing the capital to support continuing operations of the ranch. Under this arrangement, the portion of a property least important to agricultural operations or conservation goals is developed and an easement is granted on the balance of the property to ensure that the ranch operation remains intact. Ranchers can often generate more income with fewer homesites because the value of each site increases substantially when the land around it is protected forever. Building sites can be reserved for future heirs or purchased by buyers who also have a "land ethic," so long as they do not adversely affect the ranch's overall conservation value (Chapter 4).

• How will skyrocketing property values around you affect the value of your ranch and the ability of your heirs to retain ownership?

Even though you may not have experienced increased property taxes, you still need to be aware of the escalating property values around you. Appreciated land values significantly increase the fair market value of your land, and thus the income taxes (payable on the capital gain) when you dispose of your property.

On your death, if you are unable to roll your ranch

"During the past 25 years the biggest challenge to our industry has been dealing with the increasing pressure of development and the fragmentation of the land."
– Charlie Russell, Hawks Nest Ranch, Alberta

over to a family member, the taxes your estate pays will be based on the property's full fair market value. Even if you are able to roll your property over, the capital gain liability goes with it, and at some point, someone will have to pay that tax. If you wish to help your heirs remain owners of the land, you can minimize your taxes on death with a conservation easement that reduces the property's fair market value (Chapter 4).

Sustaining Agriculture

• How can you sustain your way of life for both your family and the larger community?

Assume for a moment that you have preserved both the family business and its natural character only to find that neighbouring ranches are slated for subdivision. The negative impact of what happens around you has the power to "undo" all your hard work and planning.

Although, there's no simple recipe to protect your land and ensure that adjacent lands won't become subdivided, more and more ranchers are seeking support from their neighbours to preserve their agricultural land base and promote community stability. A growing number of successful initiatives spearheaded by ranchers are popping up all over western North America. Chapter 5 describes several of these partnerships in which ranchers are setting realistic and attainable goals to maintain the integrity of their local communities.

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2 CONSERVATION EASMENTS (CONSERVATION COVENANTS)

Protecting Your Ranch While Retaining Ownership

"At one time the land was only suitable for cattle, but its now more suitable value-wise for developers or wealthy individuals wanting to buy a "get away" acreage."
– Janet Main, MX Ranch, Alberta

With generations of work invested in your land, your primary concern is to preserve your ranch and keep it in the family. This strong connection to the land is often marked by a commitment to maintain your working ranch along with the rural lifestyle and natural values it supports. But so often, ranching families are forced to sell their land just to pay taxes on death or satisfy multiple heirs.

The irony of this too well-known story is that the outcome, "condos replacing cows," goes against everything you have ever worked for. One of the strongest measures you can take to prevent a forced sale and ensure that your land is permanently protected as a working agricultural landscape is a conservation easement (or conservation covenant or conservation agreement){2}.

Concerned about the rapid pace of change, a growing number of ranchers in western Canada have responded by voluntarily placing conservation easements on their ranches. This chapter describes the flexibility and benefits associated with granting a conservation easement.

What is a Conservation Easement (Covenant, Agreement)?

A conservation easement is a voluntary contract that permanently defines the type and intensity of future land use while allowing landowners to retain ownership and control of their property. Like other strategies described in this guidebook, conservation easements are tailored to the needs of each landowner.

To understand how conservation easements work, think of real estate as consisting of a "bundle" of property rights. These include the right to graze, to subdivide the land, to construct buildings, to restrict access, to harvest timber, or to mine. In many instances, these rights can be separated from the bundle and transferred to another party. Sub-surface mineral rights, for example, are commonly held by the Crown, and are separate from surface rights.

Conservation easements involve the purchase or donation of a property's development rights. In general, conservation easements limit the amount and location of future structures and define the type of land uses that can occur. Though each province or territory's legislation is slightly different, easements can be constructed to preserve ranching operations, and allow grazing and ranching activities to continue. They do not grant public access unless the landowner specifically wishes to permit it. With a conservation easement, the landowner can reserve the right to carry out specified activities, such as limited development and commercial use of part or all of the land (i.e. guest ranching, logging, etc.), so long as these activities do not unduly affect the land's conservation values (see Chapter 4).

Easements can be placed on the entire tract or on only part of a property; the "eased" area remains in private ownership. Easement restrictions are typically permanent and "run with the land," binding the original landowner and all future landowners. Like all property instruments, conservation easements are recorded on the title so that future owners and lenders will know about restrictions when they obtain title documents. The land remains on the tax rolls in private ownership.

The purposes for which a conservation easement may be designated are outlined in the relevant provincial or territorial legislation. Though they differ in detail between jurisdictions, the purposes generally revolve around the conservation of biological diversity and scenic beauty. Most easements placed on western Canadian ranches meet these criteria by providing open space, buffer zones, and relatively natural habitat.

Tax Advantages of Donating Easements

Most landowners who place conservation easements on their land donate them to a qualified land trust or public agency and continue to live on the property. In addition to safeguarding the property in perpetuity, landowners who donate easements may gain substantial savings in income taxes.

The donation of a conservation easement is a charitable gift, and usually qualifies for a tax receipt provided that the easement is donated to a qualified charitable organization{3} or public agency for conservation purposes. The amount of the tax receipt is calculated based on the impact of the easement on the fair market value of the property.

To get the maximum income tax relief from the donation, the easement land should be certified by Environment Canada (or its provincial designate) as Ecologically Sensitive Land. This allows the landowner to take advantage of special provisions under the Income Tax Act, which allow for a greater percentage of the charitable receipt to be used in any given year, and ensures capital gains are included in income at a lower rate (see Appendix A for a more detailed description of the potential effect of a conservation easement donation on a rancher's income tax).

Though some provinces have now created their own criteria, Environment Canada's general definition for Ecologically Sensitive Lands, includes:

Areas identified, designated or protected by a local, provincial, territorial, national or international system or body as ecologically significant or ecologically important;

Natural spaces of significance to the environment in which they are located;

Sites that have significant current ecological value, or potential for enhanced ecological value, as a result of their geographic proximity to other significant properties;

Municipal or rural lands that are zoned or designated for biodiversity objectives;

Natural buffers around environmentally sensitive areas such as water bodies, streams or wetlands; and
Areas or sites that contribute to the maintenance of biodiversity or Canada's natural heritage.

Capital Gains Benefits

Surging real estate values and the resulting taxes on capital gains have made it difficult for many landowners to pass ranches on as viable agricultural units. Taxes payable on death can be in excess of 50 percent, depending on the provincial tax rate. Ranching and agricultural families unable to take advantage of rollover provisions have been liable to pay such high taxes on death that they are forced to sell all or part of the property just to pay those taxes.

Conservation easements can reduce property values, thereby lowering taxes payable when the property is disposed of. Even if a landowner does not want to restrict a property during his or her lifetime, they can still specify by Will that a conservation easement be made to a qualifying organization upon their or their spouse's death.

Income Tax Benefits

In order to qualify for an income tax deduction, easement donations must reduce the fair market value of the property. The Canada Customs and Revenue Agency (CCRA - formerly Revenue Canada) has traditionally based the value of the easement on the difference between the property's fair market value before and after the easement is established. For example, if an easement reduces a property's fair market value from $500,000 to $300,000, the charitable gift would be valued at $200,000.

Remember that currently the taxable capital gain is one third of the capital gain related to the easement, provided the donated easement is certified as a gift of ecologically sensitive land. If the easement is not certified (or is sold), two thirds of the capital gain is added to the donor's income in the year of the disposition. If you cannot use the full receipt to offset your income in the year of your donation, any unused portion can be carried forward for as many as five successive years.

Landowners see deduction values associated with the grant of a conservation easement anywhere between 10 and 90 percent of a property's fair market value. This deduction variation is a function of specific provisions in the easement (number of homesites

WHAT IS A LAND TRUST?

Land trusts are local, regional, provincial or national charitable organizations dedicated to working with landowners to protect important land resources for agricultural, recreational, natural, scientific, historic, scenic and/or educational purposes. In recent years, land trusts have begun to appear with greater frequency across the west, reflecting a growing concern to save the region's open spaces and ranching heritage.

In response to large family ranches being subdivided into 40-acre "ranchettes" across western Canada, a growing number of ranchers have come together and worked with land trusts to acquire and protect critical ranchlands. In Alberta in 1998, for example, ranchers formed the Southern Alberta Land Trust Society to protect the native rangeland and open character of this region by identifying and promoting private land conservation options, and by holding conservation easements. Working towards this goal, landowners donated 2000 acres of conservation easements to the land trust in its first two years.

Land trusts serve many functions in a community. First and foremost, they provide technical assistance and information on private voluntary actions landowners can take to protect their land while meeting their financial needs. Typically, local land trusts hold land or easements "in perpetuity." Land trusts may also facilitate the purchase of land by conservation-oriented buyers or may pool enough resources to purchase the land outright.

Voluntary conservation efforts on the part of landowners will largely determine the quality, vitality, and future of our natural resources. Though a relatively new movement in Canada, land trusts have a proven history in the United States. Working together with landowners, American land trusts have thus far protected 4.7 million acres of land{4} – an area three times the size of Prince Edward Island.

reserved, etc.), and the difference between a parcel's agricultural value and value for development or speculation. In British Columbia the value of a conservation covenant may be lower because of the restrictions already placed on land by the Agricultural Land Reserve (see Appendix B). Because the CCRA must be satisfied of the correctness of the easement value used, you and/or the organization you have chosen to work with will need to hire a qualified appraiser, one experienced in conservation easements. For more information, consult a local land trust or an appraiser.

Easement Holders

Conservation easements can either be sold or donated to a qualified conservation organization (typically a private land trust) or public agency who serves as the easement holder or grantee. These organizations assume those responsibilities spelled out in the easement agreement, which include annual monitoring and, if necessary, enforcement. The easement holder visits the restricted property, typically accompanied by the owner, to ensure that the conditions of the agreement are being upheld.

If the easement has been violated, the grantee has the legal duty to require the owner to correct the violation and to restore the property to its condition prior to the violation. An organization that accepts the donation of an easement often will establish an endowment that supports the costs of monitoring the easement in perpetuity.

Drafting Easements

A landowner and a land trust or public agency work together to draft an easement that precisely sets forth what the owner and easement holder may and may not do, as well as the procedures for enforcing its terms. Because each conservation easement is detailed and unique to the landowner and landscape, every conservation easement should be reviewed by lawyers representing each party.

The language of an easement will likely include the following:

• Landowner's and easement holder's objectives in creating the easement;
• Legal description of the property subject to the easement;
• Term of the easement;
• Names, addresses, and legal descriptions of the parties to the agreement;
• Thorough description of existing conditions, and an inventory of those features the easement will be

designed to conserve;
• Provision for dealing with mortgages;
• Careful description of the restrictions placed upon the landowner's use and development of the property, and of the land uses and agricultural operations not affected by the easement;
• Identification of the terms, including the timing and methods, by which the easement will be monitored and enforced, including procedures giving the easement holder reasonable access to the property and procedures to notify the landowner of noncompliance;
• Provision describing whether the easement allows or prohibits public access;
• Provision allowing the easement holder to transfer ownership of the easement to another non-profit or public agency in the event it is unable to continue its monitoring and overall stewardship role and procedures for amending the terms of the easement;
• Provision specifying which party shall bear the legal costs associated with an enforcement action;
• Provisions relating to the Agricultural Land Reserve in British Columbia (see Appendix B); and
• Any other provisions required to create a legally enforceable property interest.

You should not have to draft an easement agreement from scratch. Most land trusts have model conservation easements that contain the necessary standard legal language and that can serve as a point of departure for tailoring a conservation easement to your particular circumstances.

Why Are So Many Ranchers Turning to Conservation Easements?

As more and more landowners recognize the economic and stewardship benefits of conservation easements, they are becoming a principal method for protecting ranchland from subdivision. Estate planners are turning to conservation easements in conjunction with other tools to provide ranching families significant financial savings (see Chapter 3 for more information on succession planning). Private land conservation strategies are helping to save not only single ranches, but entire ranching communities and landscapes. Landowners are working with their neighbours, land trusts, and public agencies to craft innovative solutions (with conservation easements among other tools) to maintain viable agricultural communities (see Chapter 5 for examples of collaborative planning efforts).

DONATING AN EASEMENT TO A LOCAL LAND TRUST
The MX Ranch, Alberta

Southwestern Alberta has long been prime ranching country, and the MX Ranch has been successfully raising cattle here since 1946. The land, especially along the eastern slopes of the Rocky Mountains where the ranch is situated, has also long been valued for its scenic, recreational opportunities. More and more these recreational opportunities are determining the market value of the land and increasing the pressure of subdivision and development on ranches like the MX.

In 1994, MX owners Janet Main, Charlie Straessle and Mac Main significantly expanded their ranch operations by purchasing a large block of summer grazing land. A key attribute of the new property besides its good grazing was its abundance of wildlife. A sizeable elk herd as well as deer frequent the open grassy slopes and flat lands, and moose continually browse the scrub and willows. Wolves and grizzly bears have found refuge within the property's diverse montane habitat.

Sitting around the MX kitchen table, Janet, Mac and Charlie realized they had a unique opportunity to conserve a block of land as a wilderness area while at the same time conserving their ranching lifestyle, free from subdivision and development. But they were worried about the financial obligations of this vision and not sure how they could keep this vision intact forever. With the help of the Rocky Mountain Elk Foundation and The Nature Conservancy of Canada they decided a conservation easement was the best approach. The easement gave them a charitable donation tax break and allowed them to secure their conservation goals on the land title.

But flexibility was key. As owners and stewards of the land they wanted to establish the conservation easements on their own terms. They wanted to keep the land in the family and to ensure whoever took over the property would forever share in the benefits of the easement.

They also realized an opportunity to work alongside other landowners and to organize a local land conservation group. While the Nature Conservancy and Rocky Mountain Elk Foundation helped arrange the conservation easement and the Nature Conservancy held it in trust, Janet, Mac and Charlie helped establish the Southern Alberta Land Trust Society (SALTS). The MX Ranch's conservation easement was then transferred to the new group, providing one of the first conservation easements donated to SALTS.

As more and more landowners recognize the economic and stewardship benefits of conservation easements, they are becoming a principal method for protecting ranchland from subdivision.

3 THINKING AHEAD WITH A SUCCESSION PLAN

The very best place to start your estate plan is to "begin with the end in mind"

"You've invested your life in the family ranch business. To keep the ranch in the family, however, you face the challenge of dividing a single asset equitably among several children. You or your heirs may pay substantial taxes when your property is disposed of (sold or transferred). And those taxes will be based on the potentially much higher 'fair market value,' rather than the current agricultural value of the ranch..Understandably, you don't want to be told what to do with your land and other assets. But if you don't begin planning for your estate now, the taxes payable may well require you or your heirs to sell the ranch, possibly for a non-ranching use.

An old saying comes to mind. There are two givens in life: death and taxes. Death is an absolute. No one has found a way to avoid it yet. Taxes, however, can be minimized and, in some instances, even eliminated through comprehensive succession and estate planning.

Another old saying notes that many ranchers are "dirt rich and cash poor". Sound familiar, even painfully so? Assuming that this describes you, it appears at first glance that this condition may seem to take away much of your opportunity for effective succession planning. In reality though, by being "dirt rich" you have some excellent planning tools available for your use. More on those later.

On death, you are generally deemed to dispose of all of your capital assets at fair market value, subject to certain exceptions. Take note of the valuable rollover provisions and capital gains exemptions, described below, which are available to ranch families and ranch assets. The impact of further increases in value of your assets should be factored into your overall estate plan. You should consult with a professional tax advisor to assist you in understanding the options for transferring your assets on death, and minimizing your tax liability.

Once you have gained a better understanding of your financial situation and are motivated to work on your estate plan, the very best place to start is to "begin with the end in mind". Focus on what you would really like to have happen the moment you are no longer here. Your answers to three simple questions will assist you greatly in this effort:

Who should inherit your assets? (If you are married, what do you want to provide for your spouse? Should your children share equally in your estate? Do you wish to include grandchildren or others as beneficiaries? Would you like to leave any assets to charity?)

Which assets should they inherit? (Should the ranch pass only to those children who are active in the ranch operation? Should you compensate other children with assets of comparable value and, if so, how?)

When should they inherit the assets? (Should you have trusts that distribute assets over time or should the assets be distributed immediately? Could too large an inheritance change a beneficiary's personality or ruin his or her work ethic? Should you begin to make lifetime gifts to heirs or wait until your death?)

Answering these questions will move you along the pathway to good planning. Your answers will begin to help you assume control of what will happen to your ranch and other assets, and determine:

- Who will receive a share of your assets;
- When and how your beneficiaries will receive their inheritance;
- Who will manage your estate (executor or trustee);
- How to provide for the orderly continuance of your ranching business;
- How to begin to pass your ranch on to your children during your lifetime, if that is your desire;
- How to provide for the sale of your ranch, if that is what you desire;
- How to make the best use of the rollover provisions and capital gains exemptions available to ranchers; and
- How to retain control of your ranch during your lifetime, while accomplishing the above.

Effective succession planning can be viewed as a two part process. The conceptual part enables you to create a vision for your ranch's future. By answering the questions posed above, you will form the conceptual core of

your estate plan. This brings you to the second part of effective estate planning, the technical and mechanical part.

The technical steps that you must take for your succession or estate plan to come alive can be cumbersome and confusing, particularly if you try to do it all by yourself. Fortunately, there is an array of dedicated professional people whose assistance you can solicit. The best way to view them is that you raise their beef for them and they can help you "save your own hide."

These professionals include: accountants, lawyers and consultants who specialize in estate and financial planning; insurance advisors; appraisers; and land trusts and other qualified charitable organizations. These professionals offer a wealth of knowledge about estate planning tools that can be tailored to your situation. A brief summary of some of the common tools used to assist "dirt rich, cash poor" estate owners follows.

Capital Gains Exemption

A significant tax benefit is available to ranchers in the form of a lifetime exemption from tax on capital gains arising from the disposition of ranch lands or buildings to a maximum of $500,000, provided certain requirements are met. It is important to have professional advice to determine if your ranch operation qualifies for this tax benefit, and if steps can be taken to meet the tests.

There are three main requirements to qualify for this special tax treatment which are generally described as follows. First, more than 50 percent of the fair market value of your operation's assets must be used principally in the business of farming (or ranching) throughout any 24 month period. Also, at least one of your family members must be actively engaged on a regular and continuous basis in the ranching activity. Finally, at the time you dispose of your the operation, 90 percent or more of the fair market value of the property must be used in the ranching business. Each of these three tests requires certain family members to be involved in the ranching business: yourself, your spouse, your children or your parents.

The $500,000 capital gains exemption is available to each individual (though not to a corporation that sells its assets). Therefore, it is also prudent to ensure your family ranch operations are structured in such a way as to maximize each person's ability to utilize their own capital gains exemption. Family farm corporations, family farm partnerships and family trusts are common vehicles used to multiply access to the capital gains exemption among family members.

Spousal Rollover

A spousal rollover is one of the simplest methods of deferring tax arising on death until the death of the surviving spouse. Any assets passing directly to a surviving spouse, or to a trust for his or her benefit, can transfer free of tax at the time the first spouse dies, provided certain requirements are met. Therefore, if you are willing to pass all of your assets to your surviving spouse, you can defer tax that would otherwise arise at the time of your death. A spousal rollover only defers the tax liability

GETTING RID OF THE UNCERTAINTY
An Operating and Ownership Agreement

Tom and his two sons had been ranching together successfully for a number of years. He admitted that the boys were running the operation, and in fact were probably doing a better job than he did. They had the education and the drive which it takes to make an operation like theirs work. So how come he feels so much better today than he did that day over 10 years ago? An operating and ownership agreement was hammered out to replace the uncertainty and confusion.

Today the ranching 'operation' is incorporated and all of the family members own various types of shares. They have a board of directors of which dad is the Chairman and everyone, including the wives, are active members. Dad can still help direct and make the important long range decisions, while leaving the management of the operation jointly to his boys as ranch manager and farm manager. And yes, they all have business cards indicating their areas of responsibility and authority!

They kept the land outside of the corporation and started an orderly transfer to the children. Tom admits that their professional advisors were reluctant to see the land outside of the corporation, but the family is certainly glad they retained ownership. In addition to each person retaining their own $500,000 capital gains exemption, they also kept pride of ownership, and a degree of independence.

Tom admits that as ranchers they are an independent bunch and as important as the business is, it is not only a business. It's a business, a family and a "darn good way of life" when everyone understands their role and is pulling in the same direction.

until the death of the surviving spouse.

Although this transfer can be made at the adjusted cost base of the deceased spouse in order to defer tax, the transfer to the surviving spouse could also be made at fair market value. This strategy would often result in the deceased realizing taxable capital gains in the year of death, but the gain may be offset by any available $500,000 capital gains exemption. The adjusted cost base of the property transferred to the surviving spouse would thus be increased, reducing future capital gains once the surviving spouse disposes of the property.

Rollover to Children or Grandchildren

The Income Tax Act allows qualified farm property to be transferred (at death or during the lifetime of the parents) to your children or grandchildren without incurring tax. The child or grandchild must be a resident of Canada at the time of the transfer. Qualified farm property can include land and buildings, machinery and equipment, shares of a family farm corporation, and an interest in a family farm partnership. The property must be used principally in the business of farming (or ranching) before the transfer, and you, your spouse, or any child must be actively engaged in the business. For shares of a family farm corporation to be eligible for the tax deferred family rollover, 90 percent or more of the fair market value of all the company's assets must be used in the business of farming or ranching.

The property can be transferred to the child (or grandchild) at the parents' adjusted cost base, ensuring no capital gain (and thus no tax) arises for the parents at the time of transfer. The tax is deferred and would be payable by the child if he or she then disposes of the property. However, the property need not be transferred at the parent's adjusted cost base. The transfer price can be set anywhere between the adjusted cost base and fair market value. This provision provides for considerable flexibility when planning the transfer of ranch assets to children.

Family Farm Corporations and Family Farm Partnerships

Family farm corporations and family farm partnerships can be useful estate planning tools for ranch families. These structures may enable you to split income and capital gains among your children and grandchildren without losing operational control of the ranch or the income generated during your lifetime (a Family trust, discussed below, is another method of achieving these objectives).

Capital gains arising on the disposition of shares of a qualifying family farm corporation or the disposition of an interest in a qualifying family farm partnership may be eligible for the

$500,000 capital gains exemption described above. Remember that every individual is able to shelter up to $500,000 of capital gains from tax for qualifying farm or ranch property, whether held directly or indirectly through a corporation, partnership or trust. Therefore, it is often very beneficial for your estate plan to consider ways in which you can multiply access to the capital gains exemption and share ranch income among family members while achieving other non-tax objectives related to control and equalzation.

Family Trusts

A "Trust" refers to an arrangement where property is placed under the management and control of another for the benefit of an identifiable person or class of persons. "Family Trusts" have many uses in effective estate planning. In particular, family trusts have several non-tax advantages including: the ability to continue to control assets which are held in the trust; the ability to legally and effectively transfer an ownership interest to minor children and grandchildren; opportunity to equalize estate distributions; ensuring that the individuals you want to benefit from your assets will indeed benefit, especially in second marriage situations; and may provide creditor proofing protection, including potential claims on marriage breakdown. From a tax perspective, family trusts are an excellent way to provide an opportunity for income and capital gains splitting, multiplying access to the capital gains exemption and probate fee minimization (in provinces where caps are not in place). Though a Trust is deemed to dispose of its assets every 21 years, there are methods for dealing effectively with the resulting tax implications. When the tax and non-tax advantages of family trusts are combined, a family trust can be a very flexible and powerful estate planning tool.

Conservation Easements

Chapter 2 deals with conservation easements in detail. For estate planning purposes, appropriate use of this flexible tool can offer three distinct advantages. First, an individual donating an easement can receive a non-refundable tax credit generally based on the difference between the property's fair market value before and after the donated easement is established. Second, the size of your taxable estate is reduced by the value of the conservation easement. And third, an easement ensures the land remains productive and protected after your death.

Equalizing Estate Distribution

Here is a common scenario in ranching families: You would like to distribute your estate equally to all of your children, but you only have one child who is involved in ranch operations and wants to continue to ranch. How can you be fair and still maintain your ranching operation? The specifics of each case vary greatly, making it difficult to propose a generic solution. However, rest assured that in the vast majority of cases, workable solutions can be found using an array of estate planning tools including trusts, specialized life insurance policies, and gifting strategies. Once the details are worked out and the dust settles, the "ranching kid" can continue to operate the family ranch while the "city kids" receive a fair share of the value of the parents' estate. To do less than this often ends in open warfare among the surviving family members. Effective planning on your part, though, can help avoid this possibility.

The succession and estate planning tools described in this chapter are ones often used by ranching families. To make the best use of these tools, you must "begin with the end in mind" and develop the conceptual part of your succession plan. Once you identify your objectives, your succession planning team should be able to assist you in maintaining control over the ranch during your lifetime, as well as either keeping it in the family or disposing of it in accordance with your wishes upon your death in the most tax beneficial manner. The tax laws in this area are very complicated and constantly changing so it is very important to consult with an experienced estate planning professional to ensure your plan achieves both your tax and non-tax objectives.

KEEPING IT IN THE FAMILY: A Hypothetical Case - *Conservation easements in succession planning*

Mom and Dad have worked hard to build the ranch. They have begun to think about retiring and passing the business on to their daughter. The daughter returned to the ranch after university , and undertook to diversify the ranch operations and direct the marketing of the ranch's production. Dad, Mom, and daughter are attracted to the idea of protecting the ranchlands for the long-term by donating a conservation easement on at least part of the land. While mom and Dad do need to realize on the equity they have built up in the ranch to fund their retirement, they understand that the price their daughter can afford to pay them for the land is limited by its productive capacity. The fair market value however, has ballooned due to the demand for rural escape properties from people in a nearby booming city. The question is, "How can Mom and Dad receive enough money from selling the land to their daughter, but at a price that she can afford?"

One thought that came to them was to donate a conservation easement on a section of ranch land and sell the land to the daughter at the "residual" fair market value. They would first want to contact a local land trust to see if they would accept the donation and help them determine if the proposed easement property could be certified as ecologically sensitive land (in order to get the greatest tax relief). The fair market value of the land was $1200/acre, the adjusted cost base was $200/acre, and Mom and Dad have a $500,000 capital gains exemption available to them. An appraisal by an accredited Appraisal Institute of Canada real estate appraiser determined that a conservation easement would comprise 40 percent of the fair market value of the land (thus the remaining, or residual fair market value would be 60 percent, or $720/ac). Illustrated below are the tax implications of this strategy for Mom and Dad:

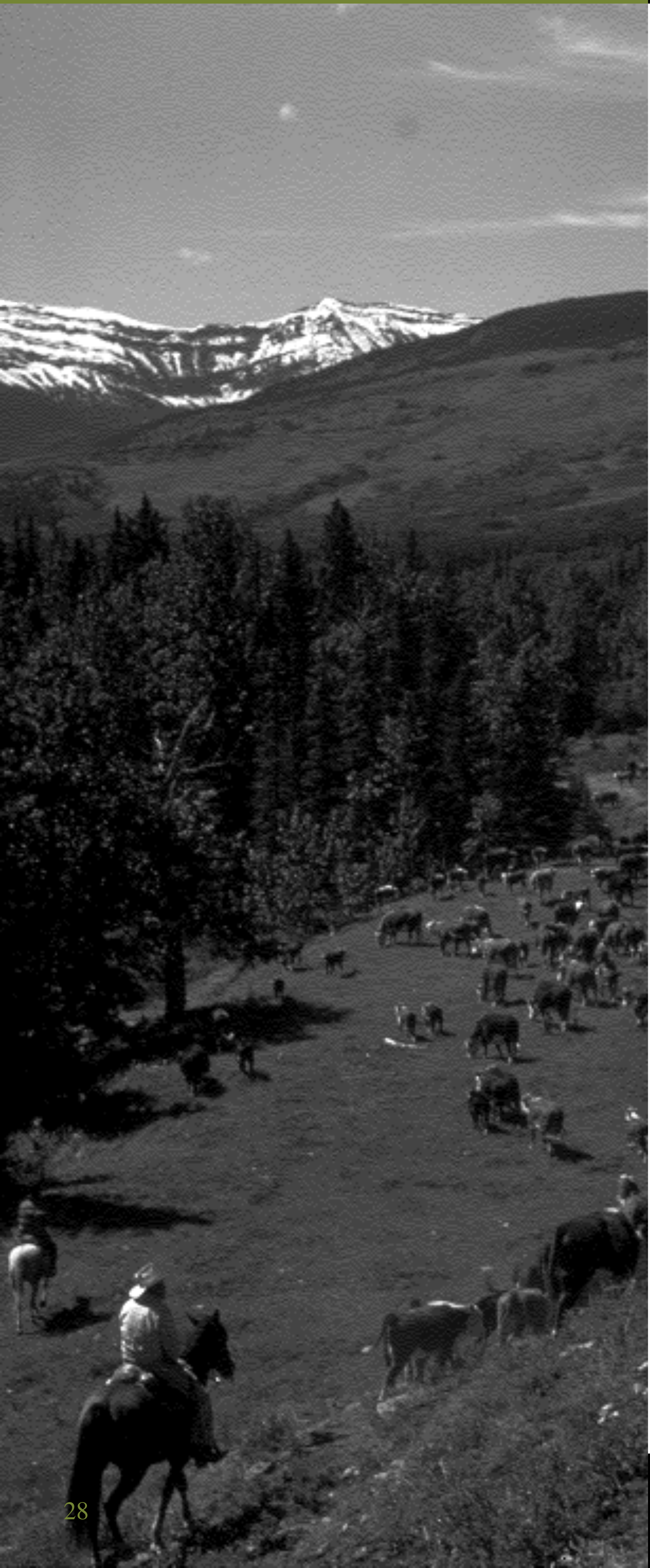
	Results of the donation of a conservation easement	Results of the sale of land to daughter (at "residual" value)
Proceeds to Mom and Dad	$0.00	$ 460,800 (i.e. 640 acres x $720/ac)
Charitable Donation Amt (i.e. $1200/ac x 40% x 640 ac.)	$307,200	$0
Capital Gains Realized	$256,000 (640 ac. x $1000 x 40%)	$384,000 (640 ac. x $1000 x 60%)
Capital Gains exemption used	($116,000)	($384,000)
Net Capital Gains	$140,000	$0
Taxable Capital Gains (only 1/3 of Capital Gain)	$46,620	$0
Tax Payable on Capital Gain (at 45% marginal tax rate)	$20,979	$0
Tax Credit generated by donation	($307,200 x 45%[1])	($138,240)
Tax Credit available for use over up to next 5 years	$117,261	

The remaining $117,261 tax credit can negate the tax payable on about $260,000 of future income for Mom and Dad (at a 45 percent marginal tax rate). This future income might be from their daughter buying more land, machinery, or cattle from them in the next few years.

The result? Now Mom and Dad have a cash retirement fund (with further tax-free income possible), and the daughter has acquired land at less than fair market value, but with the adjusted cost base bumped up to $720/acre.

4 SELLING AN INTEREST IN YOUR LAND

Conservation buyers are people who value – and try to protect through their purchases – the open spaces, ranching traditions, and healthy, natural ecosystems of the west.



With assets tied up in the land, many ranchers depend on their property as a last resort savings account, retirement fund or insurance policy. Estate settlement, education, medical, and other major expenses can also create a pressing need for liquidity, forcing many ranching families to sell all or a portion of their land. When confronted with these needs, some ranchers are finding that they can convey an interest in their land without compromising their agricultural operations. This chapter introduces options for ranchers who need to liquidate a portion of their real estate assets but want to keep the agricultural uses of their lands intact either for their families or other ranchers.

One helpful way to plan for the sale of land is to reconsider the “bundle of rights” metaphor for land ownership, thinking instead in terms of a multi-layered cake. Each layer in the cake corresponds to a different right of land ownership, such as the right to graze livestock, the right to subdivide and build houses, the right to control access for recreation, and the right to harvest timber. When most people sell property, they slice the cake vertically; that is, they sell a parcel of land with all of the rights of fee-simple ownership attached. This presents a troubling dilemma: if a ranching family needs to sell a large parcel of land, the long-term viability of the overall operation is often compromised. However, ranchers can often meet their financial obligations – without giving up agricultural productivity – by slicing their cake horizontally: selling some but not all of the layered rights of ownership to their entire property.

Purchase of Development Rights

One way to stay in agricultural production is to sell a conservation easement under a Purchase of Development Rights (PDR) program. Though such programs have not been formally established in Canada, they have found considerable popularity in the United States, and provide food for thought for Canadian agencies and municipalities.

As an alternative to protecting land through fee-simple acquisition, an increasing number of American public agencies are now purchasing easements from ranchers and farmers to protect critical open lands from encroaching development and to establish core agricultural areas. What makes this approach appealing to many ranchers is that it keeps the land in private ownership, safeguards its agricultural and conservation values, and provides financial compensation for extinguishing the development rights.

PDR programs differ in the lands they aim to protect. Some focus on big game habitat and wildlife migration corridors, while others emphasize historic rural landscapes and agricultural production. PDR programs have been particularly successful in regions and states experiencing rapid growth and conversion of rural lands into urban or suburban uses.

In the American west, these programs are most frequently administered by state fish and game departments or the U.S. Fish and Wildlife Service. In Montana, the Department of Fish, Wildlife and Parks has adopted a PDR program to supplement fee-simple acquisition measures. They have even transferred state-owned land to ranchers (with certain restrictions) in exchange for relinquishing their development rights.

PDR programs provide financial benefits not only to landowners but also to the larger community. According to the American Farmland Trust, Montgomery County, Maryland has saved almost half a billion dollars in infrastructure costs by allocating $50 million towards purchasing easements on contiguous blocks of farmland.{5} Startling numbers like these provide a strong incentive for communities across the country to keep agricultural lands in production and prevent sprawl.

The key to developing successful PDR programs in the United States was securing a steady source of public funding through state bonds, lottery proceeds, real estate transfer taxes, property taxes, or cigarette taxes. Given the high cost and narrow conservation objectives of PDR programs, landowners cannot rely on this approach alone to adequately protect a critical mass of ranch and farmland in the rural west. PDR programs, however, can serve as a targeted approach to protecting special agricultural lands threatened by imminent development.

Conservation Buyers

Conservation buyers are affluent people who value – and try to protect through their purchases – the open spaces, ranching traditions, and healthy, natural ecosystems of the west. In contrast to many land developers and speculators, conservation buyers can be real allies of ranchers. Though this technique has so far had limited application in Canada, it has great potential, and has been widely used in the United States.

Many conservation buyers seek scenic, wildlife-rich properties for riding, hiking, hunting, fishing, and other recreational activities. Some are retirees, while others are prospective second homeowners. Few though are interested in the business of ranching and farming. Realizing this, a small number of ranchers have found that they can meet their financial needs by selling a private homesite and limited recreation access rights to their ranch, while safeguarding the balance of the ranch from development with a conservation easement. The ranchers generate income to capitalize their operations, and the buyers receive what they consider to be the amenities of ranch ownership without the responsibilities of ranch management.

More commonly, conservation buyers purchase large tracts of desirable land, which they may protect with conservation easements. These buyers compete with developers for the right to own such property. When conservation buyers outbid developers, the land often remains in agricultural production and is leased by neighbouring ranchers. Sources for finding conservation buyers include local land trusts, agricultural trade magazines, and a growing number of real estate brokers who specialize in conservation deals.

For ranchers who prefer to sell their property to a conservation buyer or fellow rancher rather than a developer, there are tools available which increase the likelihood that a conservation buyer will end up with their property. These tools, right of first refusal and option to purchase, extend the time frame of the transaction, allowing the preferred buyer more time to raise the needed capital.

Right of First Refusal

A right of first refusal is an agreement between a landowner and a potential buyer in which the landowner agrees that if he or she receives a legitimate offer from another party, the holder of the right of first refusal will have a specified period of time to match the offer and

COMBINING PARTIAL SALE, LEASEBACK AND TOURISM TO KEEP A RANCH WORKING

The Black Creek Ranch, British Columbia

The Black Creek Ranch sits on 1200 scenic acres along the Horsefly River in central British Columbia. The ranch is home to cattle, moose, mule deer, Chinook and Coho salmon, and Jill Brown-John, the ranch's owner. For some time, Jill had been watching the margins on her operation getting tighter, and ranches throughout the area being split up into recreational ranchettes. She was determined to keep her ranch viable in the face of these changes, but she needed an option that took into account her economic realities.

In 1998, Jill negotiated an agreement with The Land Conservancy of British Columbia to sell 760 acres of her land; enough to pay off debts for the family and to secure the critical salmon spawning and riparian areas that The Land Conservancy was interested in restoring. The Land Conservancy was also interested in helping Jill maintain her ranch. The agreement included a provision to lease back areas for haying and calving, with charges for the lease simply covering the tax on the land.

As a further step, Jill explored options for diversifying her operation. She plans to reduce the cowherd to 40, sell the haying equipment and replace the hay production side with a custom grazing enterprise. During the winter months her cows will be sent south for winter grazing, this will afford her time to devote to marketing her ranch as a vacation retreat. Her guest operation highlights fresh, natural beef, raised alongside a protected, world-class salmon habitat. Hosting only one party at a time helps keep the ranch natural and un-commercialized. She offers tours through out the year, and her custom grazing enterprise allows her to offer cattle drives to guests on any given day during the summer months. In the fall, people come to the ranch to watch the incredible salmon spawn.

The three enterprises – tourism, cow/calf and custom grazing – reinforce each other. Jill has confidence that this fit will provide her with the competitive advantage to build this ranch into a viable, self-sustaining family operation.

acquire the property. Rights of first refusal can be especially useful to landowners who want to guarantee a family member, neighbour or land trust the chance to purchase their property in the event of a forced sale.

The holder of a right of first refusal does not have to buy the property. For example, a rancher could acquire a right of first refusal on a neighbouring property to protect his or her ranch from a conflicting adjacent use. If the neighbouring property is about to be acquired by someone whom the holder of the right believes will continue ranching, then the holder may decide not to exercise the right of first refusal.

Most rights of first refusal extend for 30 to 120 days; the longer the time period, the more valuable the right. there are a number of mechanisms which can be used to determine the price for a right of first refusal. Landowners who want to ensure that land use on their property stays the same may convey rights of first refusal for a negligible amount to a "friendly" buyer. Neighbouring landowners may also exchange rights of first refusal over one another's land, giving each party added certainty.

Rights of first refusal generally do not diminish property values; they simply require the landowner to allow the person holding the right a chance to purchase the property at the value of the offer. The only concession by the landowner is the time period granted to the holder of the right of first refusal.

Option to Purchase

A person who holds an option on a property has a temporary right to buy that property at a pre-determined price. In legal terms, an option is the exclusive right to buy property at a specified price within a specified time period. The longer the time period, the more valuable the option.

The holder of an option is not obligated to buy the property; he or she simply has the right to purchase it at a pre-determined price until the expiration of the option. In the meantime, the owner of the property is prohibited from selling to another buyer and is required to sell to the option holder if the option is exercised.

Like rights of first refusal, most options are acquired at a fraction of the property's value, though generally at a greater cost than rights of first refusal. Options usually do not extend beyond six months. If the holder does not exercise the option before its expiration, the payment usually is forfeited to the property owner.

This approach is often used by land trusts, providing them with additional time to find a conservation buyer or raise the cash to purchase the development rights, make a fee-simple purchase.

Limited Development

The concept of limited development is not new. For years, ranchers have been selling off a few homesites to meet their cash needs. What is new is the concept of protecting the rest of the ranch from future development, thereby allowing a rancher to make more by selling a few carefully selected lots than by sub-dividing parcels into 40-acre "ranchettes." Contemporary limited development plans include restrictions on the location and total number of homesites, enforced by conservation easements or similar instruments. Under this arrangement, ranchers can generate more income with fewer homesites because the value of each site increases substantially when the land around it is protected forever. Often times, a portion of the tax liability from the sale of a protected homesite can be offset by using a conservation easement as the device for restricting development.

Whether the landowner decides to sell one homesite or ten, all lots should be chosen so they do not interfere with ranching operations or detract from the area's scenery or natural resources. In cases where there are several homesites on the ranch, the landowner can sell them all at once or one by one as income is needed, even over several generations. Unlike conventional subdivision, this process allows landowners to realize a return from their property and at the same time safeguard some of its natural assets and value as a working ranch.

FINDING A CONSERVATION BUYER TO SAVE THE RANCH
Rocking Z Ranch

By selling a homesite with limited recreation access to the rest of the property to a conservation buyer, ranching families are generating revenue to pay off debts while retaining all of their agricultural rights.

A pioneering example of this approach is fourth generation ranchers, Zach and Patty Wirth of Wolf Creek, Montana. With the help of American Conservation Real Estate and the Montana Land Reliance, the Wirths granted a conservation easement on their ranch which restricted new development to a couple of cabins in the headquarters area, plus a single homesite on the other end of the ranch. The Wirths sold this 21-acre homesite, along with a deeded parcel of land and limited recreation access to the rest of their 1,000 acres. The Wirths retained exclusive agricultural rights to the buyers' homesite parcel, except for a three-acre building envelope around the new homesite. The buyers got what they wanted – the privacy and amenities of ranch ownership, and the Wirths got the cash needed to capitalize their operation, making it possible for them to continue ranching. Lane Coulston of American Conservation Real Estate, remarked, "By placing a conservation easement on their land, the Wirth family is making a personal statement about their commitment to the future of ranching. This family along with many others is helping to create a climate where other ranchers are more likely to grant conservation easements, thereby ensuring the long-term land tenure needed to appropriately manage any agricultural operation."

The key to this transaction was the conservation easement which assured the buyers that the recreational, open space, and wildlife amenities of their investment would remain forever unimpaired by further development. It also provided the Wirths a substantial premium on the sale price.

One way to stay in agricultural production is to sell a conservation easement under a Purchase of Development Rights (PDR) program. Though such programs have not been formally established in Canada, they have found considerable popularity in the United States, and provide food for thought for Canadian agencies and municipalities.

PURCHASE OF DEVELOPMENT RIGHTS (PDR) PROGRAMS IN PRACTICE

Counties in the American west are increasingly initiating PDR programs. Concerned about the rapid conversion of open lands in the Yampa River Valley in Routt County, Colorado, a coalition of ranchers, conservationists, builders, and business leaders spearheaded a county initiative to create a PDR program. In 1996, local residents passed this measure with a "one-mill" (.001) property tax increase which translates into $10 for each $100,000 of assessed valuation. This ten year initiative is expected to generate an estimated $343,000 in its first year, of which more than 55 percent of the revenue will come from out-of-state residents and corporations. This funding will supplement a $3.2 million grant from Great Outdoors Colorado (funded by state lottery funds) and a $250,000 start-up fund from the city of Steamboat Springs and Routt County to launch this program.

Even though similar style PDR programs have not been established in Canada, some jurisdictions are moving in that direction. The Manitoba Habitat Heritage Corporation (MHHC) – a crown corporation established by the Province of Manitoba – works to conserve fish and wildlife populations using a variety of cooperative educational, financial and legal tools. Recently the MHHC initiated a program to assist in the implementation and delivery of conservation easements. Under the program, purchased easements may be undertaken with a partner such as The Nature Conservancy of Canada or the Delta Waterfowl Foundation, with the assistance of the MHHC.

The Rocky Mountain Elk Foundation Canada is in the fourth year of a cost sharing arrangement with the Government of Saskatchewan's Department of Environment and Resource Management to acquire lands in the "forest fringe" area of the province. Lands are acquired for conservation purposes, with the Department holding title and the Elk Foundation holding an easement on each property. The Saskatchewan Government has made similar arrangements with Ducks Unlimited and the Saskatchewan Wildlife Federation. In most cases, the previous land owner has signed a lease agreement with the Department to continue the agricultural use of the land to the same extent as before. As of April 2000, the Elk Foundation had been instrumental in securing over 5600 acres under this arrangement, and was negotiating the easements with the government of Saskatchewan.

In Alberta in 1998, The Nature Conservancy of Canada began purchasing conservation easements in a limited geographic area around Waterton Lakes National Park, an incredibly diverse and productive landscape. The Conservancy structures arrangements based on appraiser estimates of the amount that conservation easements reduce the market value of a property within this area. To date, the purchase of conservation easements has been used to conserve over 4000 acres of the most highly valuable habitat on private land in the Waterton area.

In British Columbia, even lands within the Agricultural Land Reserve (ALR) are facing an increase in value due to speculation, reflected in the high prices paid for ALR land (see Appendix B for more detail on the ALR and the purchase of development rights). The Land Conservancy of British Columbia, therefore, is working to establish a PDR program to assist ranch owners in that province.

5 WORKING TOGETHER TO STAY IN BUSINESS

"I'm the third generation on this ranch, and maybe my kids will be the fourth."
- Jack Dawson, Jefferson County, Montana

Pioneers who came to the West in the days of the frontier soon discovered that its image as a land of fiercely independent loners was more myth than reality. Though many who managed to make a go of it in the West were able to do so because of their ability to take care of themselves, survival in such a rugged land required cooperation and interdependence too. While the rest of the country was reading dime novels of shoot-outs and range wars "winning" the West, a society was being built beyond the 100th meridian with community barn raisings, brandings, hayings, and other events of neighbourliness and cooperation. The need to work together was so great in the early West that smoldering enmities and even all-out hostilities were routinely shelved when it came time to brand the calves, build a shelter, or put up hay.

The West today is no different. Its disputes are still sensationalized, but behind the scenes and out of the headlines, people are sitting down face to face to find realistic solutions that capitalize on cooperation and hard work. In this chapter, we feature a number of those collaborative efforts from both the Canadian and American West, and give you some idea of how they came to be and what they have been able to achieve.

COOPERATING TO DEVELOP NEW MARKETING OPPORTUNITIES:
Producers of the Diamond Willow Range

In 1993, a couple of Southwest Alberta ranchers began musing over coffee about the fact that they were using manure rather than chemicals for fertilizer, were not spraying herbicides and pesticides on their croplands and cattle, and were not using growth hormone implants. They had been reading about the market for "organic" beef, and wondered whether or not they could supply that market. They were almost there with their management programs, they thought. They shared their musings with a visiting graduate student from the Faculty of Environmental Design at the University of Calgary.

The timing was fortuitous. The student returned to Calgary, fresh from his conversation with the two ranchers, to encounter some of his fellow students gathered at the University to decide on a research project for a hands-on graduate course known enigmatically as "702." He soon kindled their enthusiasm about investigating the management practices on the two ranches he had visited. The graduate students quickly set about visiting the two ranchers to discuss organic production, reviewing the literature, and interviewing prospective customers of organic products. Their conclusions: these ranches were nearly "organic" in their management practices; there was a large and expanding market for organic beef; the customer was interested as much in the management practices of the ranchers as in the fact that the beef is organic; and the customer would be willing to pay a premium for certified organic beef. The students recommended that the ranchers include the entire market chain or community in their operation, follow their beef from pasture to plate, and stand behind their product at all stages.

The 702 team recommended a visit to the High Desert Ranch of Doc and Connie Hatfield in Oregon for a management model worthy of following. By then, the conversation had expanded to include other ranchers who shared the same values. Four ranchers traveled to Oregon to visit the Hatfields, and they came away positively impressed with the community approach of the 13 ranches that had joined to form Oregon Country Beef, certified free of growth hormones and antibiotic food supplements.

Several meetings later, the group had expanded to eight ranch families who, in 1996, formed the Producers of the Diamond Willow Range Ltd. They went one step further by opting to have their products certified organic by the internationally-recognized Organic Crop Improvement Association (OCIA). They did this with the realization that anyone in Canada could claim that his beef was "organic," or "natural," without any governing standards to define his claims. The customer was confused and suspicious, with good reason, and needed the assurance that "organic" had a legal definition.

Diamond Wilow was soon the biggest certified organic beef act in town. It became obvious that organic beef would not make the producers rich. However, they believed in the values that OCIA embodied, and they enjoyed the pasture-to-plate sensitivity of the system. It was much more rewarding than just trucking their cattle to auction and walking away with a cheque. Barbeques were held on the ranches, and customers came to see how these ranchers raised their cattle. Ranchers traveled to distant fairs to sell their product and to educate the public about what the title "organic" means to the producers.

PREVENTING AN AVALANCHE OF DEVELOPMENT IN UPPER ELK RIVER VALLEY, COLORADO

Sometimes even the best of ideas can come back to bite you. When John Fetcher started a ski resort in Steamboat Springs, Colorado, he said he did it to save his cattle ranch, which was "going down the drain financially." At the time, Fetcher had no idea that he might be creating an even greater threat to his way of life by building a resort. But that is just what happened. Upper Elk Valley turned into one of the fastest growing recreation communities in Colorado. Recently John Fetcher and his

Producers of the Diamond Willow Range (left to right):
Standing (back)- *Jamie Freeman, Emma Freeman, Janet Main, Kyra Freeman, Mac Main, Larry Frith, Keith Everts, Francis Gardner, Norman Simmons, Bill Elton*.
Sitting (front) *Cas Freeman, Charlie Straessle, Sarah Freeman, Jan Frith, Hilah Simmons, Bonnie Gardner*.

family and their neighbours have found themselves looking for ways to keep the valley's meadows and foothills from being inundated with an avalanche of recreation homes attracted by the fast-growing resort.

In response, Fetcher and his neighbours first got together for a goal-setting session. What they agreed on was a common vision that surprised no one: they wanted the Upper Elk River Valley to remain a landscape of working ranches.

To achieve this goal, Fetcher and his neighbours brainstormed a strategy of "protective development." To implement this strategy, they elicited help from Marty Zeller, a landscape architect from Denver. Working with the American Farmland Trust, Zeller helped the Fetchers and some of their neighbours set aside a limited number of building sites on their ranches in areas where they would have little or no impact on ranching operations and would not detract from the landscape's scenic or natural values. Then the ranchers donated conservation easements on the undeveloped remainder of their land to the American Farmland Trust.

By designing the homesites so they are secluded and scenic enough to demand top dollar, the easements have enabled participating ranchers to create a maximum amount of value while opening a minimum amount of land to development. The Upper Elk Valley Compact, as this plan has come to be called, even includes provisions for affordable employee housing so rural community members aren't entirely displaced by wealthy urbanites.

Conservation easements have also contributed in what may be an even more important way to the ranchers' ability to maintain the security and sustainability of their property. The easements have reduced the taxable value of participating ranches sufficiently that when it comes time to pass those ranches on to the next generation, as another Colorado rancher, T. Wright Dickinson, puts it, the families won't "have to buy them back from the government first."

CONSERVING THE RANGELAND LANDSCAPES:
The Southern Alberta Land Trust Society

The foothills along the east slopes of the Canadian Rocky Mountains are as scenic as they are productive. The warm Chinook winds that clear the snow in winter, make for excellent all-season range, and cattle have fed on the native grasses here for a century. These days, Hollywood movie crews come to film westerns on these rangelands, because in so many ways the land has the look and feel that it did a hundred years ago. Because of the wildlife habitat it has sustained for generations, the area has gotten the attention of many non-local conservation groups.

Unfortunately, this beauty and diversity have led to a development boom in southwestern Alberta. Good economic times in the nearby city of Calgary have meant an increase in people, disposable cash and leisure time. That meant an increasing pressure for estate and recreational developments; more and more people wanting to escape the rush of the city to a few acres of country. The price they are willing to pay routinely runs four times the land's agricultural value, and when it comes to a bidding war, ranchers can't win against developers. The spiraling result has been less land available for ranching, less land for wildlife, and the prices on the remaining ranching land have skyrocketed.

What the local ranchers saw happening worried them, and they felt that separately, there might be little they could do to stop it. On a blustery February evening in 1996, a handful of them met in a one-room school house to explore what they could do together to address these unwanted changes. Though their ranches spread out across the foothills of the Canadian Rocky Mountains, they were neighbours. For many of them, their grandfathers had been neighbours, too, and there was a tradition of cooperating to get things done.

No one knows the social, economic, and environmental pressures these rangelands face better than local ranchers. So this small group decided that whatever mechanism they pursued, it had to be community-based and rancher-driven. They examined research that had been done in the area on attitudes to private stewardship options. They took note of the province's newly created conservation easement legislation. In the end, they decided what they needed was a local land trust. As there were very few land trusts in Canada, and none that were rancher-driven,

Southern Alberta Land Trust Society (left to right):
Back Row- *Guy Greenaway, Glenn Pauley, Max Blades, Darlene Lavendar, Mike Gibeau, Francis Gardner*.
Front Row (kneeling)- *Keith Everts, ??, Charlie Straessle*.

they explored what had been done by ranchers in the American west. A coordinator was hired to set up the organization, and by 1998, they had created the Southern Alberta Land Trust Society, or SALTS.

In its first two years, SALTS had worked with ranchers to place conservation easements on over 2000 acres of rangeland in southern Alberta. They have produced a popular booklet called "Conservation Easements: A Landowner's Guide," as well as several other informational publications. In 2000, SALTS launched a succession and estate planning program to make sure landowners and financial planning professionals were as aware as possible of the conservation and succession options available to ranchers.

SALTS provides landowners the opportunity to work with a local organization; one that is rancher-driven, and which designs easements with the agricultural producer in mind. Because the SALTS board is comprised mostly of ranchers, it is has a first-hand understanding of the issues facing working ranchers in southern Alberta. The organization works to be a resource for those ranchers, providing information on conservation options, estate and succession planning, and a variety of other topics related to keeping a ranch viable. In the process, cooperative arrangements have been set up with several agricultural and conservation groups and agencies, local colleges, and a host of others.

Working as a group, SALTS is ensuring that the tools needed to keep southern Alberta ranches viable are there in the hands of ranchers.

BUILDING NEW ALLIANCES:
Malpai Borderlands Group, Arizona

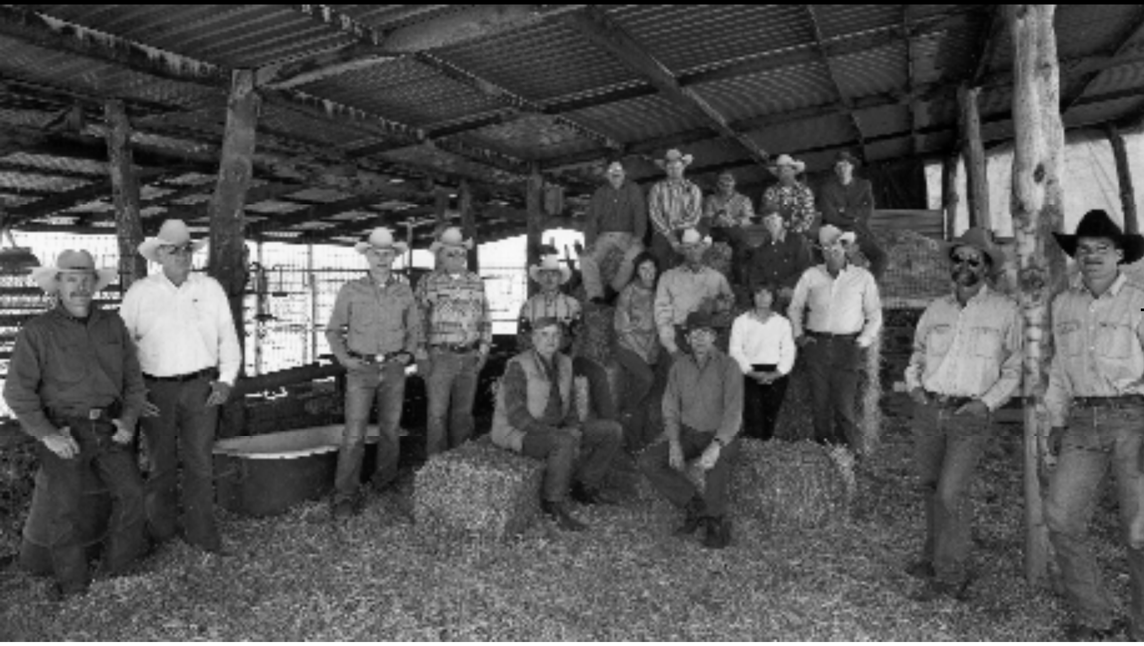
When The Nature Conservancy (in the U.S.A.) bought the spectacular Gray Ranch in New Mexico's southwestern boot heel, it wasn't long until they realized that local ranchers would have to be included in determining the future of this area. After two unsuccessful attempts to sell the Gray, representatives of The Conservancy and members of the borderlands community got together to discuss alternatives that might be mutually acceptable. Among the cast of players in these sessions was a loose-knit group of ranchers and other residents who had first come together to help get elec tricity and telephone service into the region. Land managers and scientists also contributed to this dialogue leading to the formation of the non-profit Malpai Borderlands Group (MBG).

Among those most vital to this collaborative planning effort are Drum Hadley and his son Seth, who combined their assets to buy the 320,000-acre Gray Ranch and establish the Animas Foundation. The Hadleys willingly agreed to work with the local community, The Nature Conservancy, and federal land managers to build "a healthy, unfragmented landscape to support a diverse, flourishing community of human, plant, and animal life." Through their actions, the Hadleys and their neighbours are playing a significant role in sustaining the West's ranching heritage and in protecting one of the most magnificent desert grassland/mountain habitats on the planet.

With the Gray transferred to a rancher, the community was assured that it would remain a pillar of the area's agricultural economy. At the same time, the MBG has become one of the most publicized rural community associations in the West through programs such as its efforts to reintroduce natural fire into the ecosystem and thus stem the tide of invading species into the borderlands region's magnificent grasslands. As part of this effort, the MBG has set up an innovative program called a "grass bank" under which ranchers wishing to rest their land to allow it to accumulate sufficient biomass to carry a fire may graze their cattle on the Gray. Ranchers using this grass bank may then choose to offer conservation easements in return for forage used. The MBG has also put together its own successful endangered species program, sustaining habitat for species from Chiricahua leopard frogs to jaguars, and is working on marketing its own brand of natural beef.

The Nature Conservancy has benefited from this partnership in a number of ways. Through easements and provisions for biological monitoring negotiated during the sale of the Gray, the Conservancy assured that the ranch's unique collection of rare habitats and endangered species would be managed sustainably in perpetuity. By working with the community, the Conservancy found themselves transformed from outsider to community member (at least as far as those in the MBG are concerned) and saw their goals of habitat restoration and conservation included in land management decisions over an area of nearly a million acres.

Government land managers have also played an



Malpai Borderlands Group (left to right):
Front Row - *Ed Roos, Bill Miller, Ray Turner (seated), Don Dwyer (seated), Drum Hadley, Seth Hadley.*
Second row - *Ross Humphreys, Larry Allen, Tom Peterson, Wendy Glenn, Warner Glenn, Mary McDonald.*
Back Row - *Mike Dennis, Ron Bemis, Ben Brown, Jope Austin, Billy Darnell, John Cook.*
© 1995 Jay Dusard

important role in this community-based effort. While many ranchers and others who make their living off public lands in other areas of the West are at odds with Forest Service and Bureau of Land Management, relationships between federal land managers and the rural community in the borderlands region are cooperative, productive, and even enthusiastic.

In the end what started out as a wreck in the New Mexico and Arizona backcountry has become one of the most notable examples of local alliances yet achieved in the debate over the future of western lands.

BEATING DEVELOPERS AT THEIR OWN GAME: *Community-Created Zoning Districts in Jefferson County, Montana*

For many rural people, zoning is a dirty word, an intrusion of urban regulation on country lifestyles. In a growing number of rural areas, however, ranchers are discovering that zoning can be a useful tool to maintain the rural character of their community.

Western Montana's Jefferson County, just outside of Bozeman, is an area of rolling wheat fields and pasture land with big sky vistas rimmed by surrounding mountains. Until recently it was also, as are so many areas like it, a county with no development controls. Attracted by the scenery as well as the cheap land and lack of development regulations, a couple of speculators bought isolated land sections within the county in 1992 and split them into 20-acre lots with no amenities-no water, utilities, access, or even surveyed boundaries. Then the speculators began an aggressive national marketing campaign and the lots began to sell. Neighbours found out what happened when buyers started showing up and looking for their land.

That was enough for some county residents to see the writing on the wall. They had only to look to Bozeman, a few miles to the east, to see the logical outgrowth of what had begun to happen in their own community. Around Bozeman, subdivisions are rapidly gobbling up the valleys and foothills that were once the home of family farms and ranches.

Convinced that quick action was needed, the board of county commissioners and a handful of local residents hired Bozeman consultant Keith Swenson to help them develop a comprehensive county plan. But some Jefferson County residents like Terry Murphy, a wheat farmer and former Montana legislator, didn't want an agency dictating what could or could not be done with their land. Swenson advised them to make use of Montana's 1953 Special Zoning Act which empowers local residents to form their own zoning district if 60 percent of the landowners in the proposed district petition for it. The group then took the necessary steps to set up their own special zoning district to protect the rural nature of their homelands. The most effective way to do so, they decided, was to designate a minimum lot size of 640 acres – one full section. Smaller lots already in existence were exempted. Because the participants deeply value private property rights, they included a provision that only willing landowners be subject to the zoning district. At the time of its formation, 84,000 acres were included in the special zoning district. Now, it is up to those who formed the district to inform their neighbours of its value and convince them to join.

Residents who participated in the process are pleased that the solution they came up with was put together by community members rather than imposed by a government body. "The secret for farmers and ranchers is to get ahead of the game," says Jack Dawson, "I'm the third generation on this ranch, and maybe my kids will be the fourth."

Tax incentives are often an important consideration when landowners undertake conservation efforts. This appendix provides an overview of Canadian federal income tax implications that may result from charitable donations of land or conservation easements.

Tax laws are constantly changing. In recent years, changes in federal income tax laws have enhanced the benefits of making charitable donations. The specific tax implications of a conservation plan will depend principally on the value of the gift and on the landowner's financial circumstances. For further information and planning opportunities that apply under current tax law, and to your situation, you should consult an experienced tax and estate planning professional.

This description is intended only to give you an overview of the tax considerations that may apply for charitable gifts of conservation easements by individuals and corporations. You should make decisions affecting the ownership and use of your property only after careful consideration and professional consultation.

INDIVIDUALS AND CORPORATIONS

Charitable Contributions

To qualify for a non-refundable charitable tax credit, a donation first must be considered to be a charitable gift and must be made to a Canada Customs and Revenue Agency (CCRA; formerly Revenue Canada) certified charitable organization or the Crown. Moreover, gifts have to be motivated by charitable intent and not given in exchange for something. The gift must be complete and irrevocable, without strings or contingencies. To determine whether a specific gift meets the CCRA's requirements, it is best to consult an experienced lawyer or accountant.

To obtain tax relief for gifts of land or easements, landowners must obtain an appraisal by a qualified appraiser, generally one with experience in charitable gifts of land and easements. A conservation organization can refer you to appraisers with experience in this field, but it cannot provide the appraisal. The appraisal cost is a necessary expense if you want to pursue a charitable tax credit, though the conservation organization may cover that cost.

The amount of the donation receipt will be based on the appraisal. For a gift of a conservation easement, the maximum donation amount is equal to the decrease in the fair market value of the land as a result of the easement. The CCRA may challenge the value determined, and if you are unable to support the value used, they could adjust your tax results.

Cash, securities or other assets given to endow stewardship of a conserved property can also qualify as charitable gifts.

Annual Donation Limit

Federal income tax law limits the maximum annual charitable credit available to an individual donor or the charitable deduction available to a corporate donor. Generally, for a gift of appreciated capital property (which includes most gifts of land and conservation easements), the amount an individual can obtain a tax credit for in any particular year is limited to the lesser of: a) the amount of the donation receipt or any unused carry forward amount; and b) 75 percent of the donor's income for the year plus 25 percent of any resulting taxable capital gain or recaptured capital cost allowance (as of June, 2000).

Unlike individuals, when a corporation makes a charitable donation, the corporation is entitled to a deduction, not a tax credit. The ability to deduct the donation amount against the corporation's income is subject to the same income limitations as apply to individuals: 75 percent of the corporation's net income plus 25 percent of any resulting taxable capital gains and recaptured capital cost allowance.

This formula generally allows for the tax liability arising on a donation of property to be fully sheltered by charitable tax credits in the year of donation. If a donor's tax circumstances are such that it is not possible to fully utilize the tax credit in the year of donation, the excess can be carried forward for up to five years, applying the annual donation limit each year. Any remaining portion of the deduction after the sixth year cannot be used.

Gifts of Ecologically Sensitive Land are not subject to this income limitation in determining the amount of tax credit available. To qualify as a gift of ecologically sensitive land, the gift must be made to a Canada Customs and Revenue Agency (CCRA) approved institution{6}. In addition, the land must be certified in writing by the federal Minister of the Environment (or his or her designate) as ecologically sensitive land.

Additionally, having a donation of an easement or land certified as a gift of ecologically sensitive land will reduce the tax liability that arises on making the donation. A charitable donation of an easement is considered to be a disposition of land at fair market value, and a capital gain may result. For uncertified gifts, the amount included in income is two thirds of any capital gain. For certified gifts, the income inclusion rate is halved – to one third.

Note that costs incurred in making a charitable donation, including legal and appraisal fees, may be deductible as a cost of disposing of the property.

INDIVIDUALS

Charitable Donation Tax Credits

As an example of the charitable donation tax credit available to an individual, consider a rancher who donates a conservation easement on land certified as ecologically sensitive to a qualified charitable conservation organization for a $350,000 donation receipt. The landowner's net income for tax purposes (including a $50,000 taxable capital gain on the gift) in the year of the gift is $100,000. Assuming that the donor's other income remains constant at $50,000 in subsequent years, the potential annual charitable donation tax credit resulting from this donation would be as follows:

	ANNUAL DONATION LIMIT	MAXIMUM TAX CREDIT AVAILABLE [2]
Tax Year	$	$
Year 1	100,000	40,000
Year 2	50,000	20,000
Year 3	50,000	20,000
Year 4	50,000	20,000
Year 5	50,000	20,000
Year 6	50,000	20,000

These tax credits can be used to shelter tax liability arising from any income source in the relevant years. An individual taxpayer who has $50,000 in taxable income in any particular year will normally pay taxes of approximately $12,500 to $14,000 (depending on the province they live in).

Note that depending on the value of the easement and the landowner's annual taxable income, the landowner may not be able to "use up" the entire deduction within the five-year carry forward period. An alternative approach would be to grant an easement in stages, over successive parts of the property, allowing each tax credit to be fully utilized. Remember, the CCRA generally allows charitable donations to be claimed by either spouse, regardless of which spouse made the charitable donation. This may be an important consideration in certain circumstances.

Taxation on Death

On death, an individual is generally considered to have disposed of all of their assets at fair market value. Any resulting income, gains or losses are included in the deceased's final income tax return from January 1 to the date of death and subject to tax at the applicable tax rate.

As discussed in Chapter 2, a conservation easement placed on land during an individual's lifetime can reduce the value of that individual's estate, thereby possibly lowering income taxes in the year of death. Further, a charitable bequest made in a person's Will qualifies for a charitable tax credit in the year of death based on up to 100 percent of the deceased's income. To the extent income in the year of death is insufficient to fully utilize the charitable tax credit, any unused portion can be carried back to the year immediately prior to death (and applied against up to 100 percent of the income in that year as well).

Individuals who are interested in making a charitable bequest in their Will are advised to consult an experienced lawyer and chartered accountant (and your chosen charity) to explore planning opportunities, and to ensure that appropriate language is used in the Will to achieve their desired charitable and tax objectives.

CORPORATION

Capital Dividend Account and Gifts of Publicly Traded Securities / Certified Ecologically Sensitive Land

Private corporations have a tax account called the capital dividend account. In general terms, this account is comprised of the non-taxable portion of a capital gain (currently one third). The benefit of a capital dividend account balance is that the corporation can declare dividends out of this account which are tax free to a shareholder resident in Canada. When a private corporation makes a charitable donation of capital property, such as land, the disposition of the capital property can give rise to a capital gain and an addition to the corporation's capital dividend account.

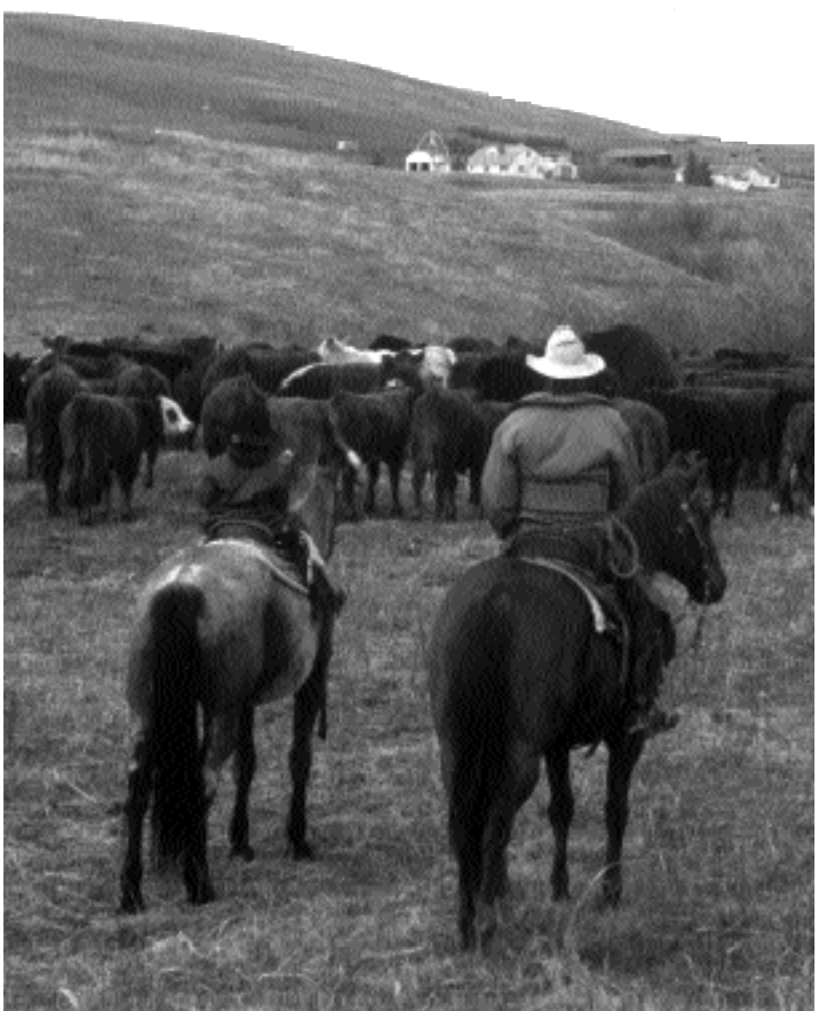
A significant benefit can be obtained where a corporation makes a charitable donation of publicly traded securities or certified ecologically sensitive land to a charitable organization. This benefit arises because the income inclusion rate on such donations, for individuals and corporations, is only half of the normal capital gain inclusion rate{7}. Further, the non-taxable portion of the capital gain on such donations is correspondingly increased, which allows a shareholder to receive tax free dividend distributions out of the capital dividend account. This reduced inclusion rate for gifts of publicly traded securities and certified ecologically sensitive land is currently only available for gifts made by the end of 2001, at which time the government may consider extending this provision.

Appendix B Consequences of the Agricultural

When established, the Agricultural Land Reserve was in effect a 'taking' (expropriation) of development rights. In general the ALR restricts the uses allowed for lands under its designation. It also limits the number of residences which may be built to one per legal parcel.

In theory the ALR is perpetual, but in practice a landowner may apply to have his or her land removed from the ALR. While it is not easy to have a property removed, it does happen. Thus there remains a speculative value on each parcel. This speculative value is increased by the fact that at some time in the future a provincial government may weaken or even eliminate altogether the Agricultural Land Reserve. This speculative value can be identified as the difference between the fair market value of the property and its value as agricultural land. This difference can range from as little as 5 or 10 percent to many times the agricultural value in areas on the urban fringe. In spite of the pressure for development, the speculative value applicable to ALR land is generally less than that in other provinces where there is no equivalent regulation.

The factor that determines the value of a conservation covenant is the effect of the restrictions on the 'fair market value' of the land. This is the extent that the covenant reduces the speculative value by removing potential development rights. The donation value of a covenant placed on ALR land is therefore less than it would be if the



Appendix C Resource

In using the tools described in this booklet to preserve your working ranch, there are a number of organizations and agencies you may wish to contact. These include national conservation groups, government agencies, and local organizations. As well, our neighbours to the south have put together a lot of great information, and we can learn a lot from what they have found successful in preserving working ranches in the American west.

NATIONAL AGENCIES

Canada Customs and Revenue Agency (formally Revenue Canada)
Charities Division
400 Cumberland Street
Ottawa, ON K1A 0L5
1-800-267-2384
Web site: www.ccra-ardc.gc.ca

Canadian Widlife Service (Habitat Conservation Division)
Environment Canada
Ottawa, ON K1A 0H3
Phone: (819) 953-0485; Fax: (819) 994-4445
Web site: www.ec.gc.ca/cws-scf
(Environment Canada maintains a list of organizations eligible to receive gifts of ecologicaly sensitive lands and easements)

Revenue Canada (see Canada Customs and Revenue Agency)

NATIONAL ORGANIZATIONS

Appraisal Institute of Canada 1111 Portage Avenue
Winnipeg, MB R3G 0S8
Phone: (204) 783-2224; Fax: (204) 783-5575
Toll free: 1-800-441-8062
Web site: www.aicanada.org
E-mail: mail@aicanada.org

land were not in the ALR.

The Agricultural Land Commission (ALC), which administers the Agricultural Land Reserve, must approve of every conservation covenant placed on ALR land. The ALC will not normally approve a covenant which limits the right to farm or ranch. Approval by the ALC can take several months even if there is no difficulty with the proposed document. Landowners who wish to place a covenant in BC should therefore allow for the extra time required in obtaining this permission, particularly if there is a need to complete the transaction before the end of the tax year.

Directory

Ducks Unlimited Canada
Oak Hammock Marsh Conservation Centre
Stonewall, Manitoba R0C 2Z0
Phone: (204) 467-3000
Fax: (204) 467-9028
Toll-free: 1-800-655-DUCK
Web site: www.ducks.ca
(Ducks Unlimited Canada also has provincial offices which are listed below.)

Land Stewardship Centre of Canada
1705 - 45th Avenue
Edmonton, Alberta T6M 2N3
Phone: (780) 483-1885
Fax: (780) 486-9599
E-mail: lsc@compusmart.ab.ca
Web site: www.landstewarship.org

The Nature Conservancy of Canada
110 Eglington Avenue W, 4th Flr.
Toronto, Ontario M4R 2G5
Phone: (416) 932-3202
Fax: (416) 932-3208
Toll-free: 1-800-465-0029
Web site: www.natureconservancy.ca
(Several regional offices of The Nature Conservancy of Canada are listed below.)

Rocky Mountain Elk Foundation
Toll-free: 1-800-CALL-ELK
E-mail: rmef@rmef.org
Web site: www.rmef.org
(Three provincial offices in British Columbia, Alberta, and Saskatchewan are listed below.)

Widlfe Habitat Canada
Suite 200, 7 Hinton Avenue North
Ottawa, Ontario K1Y 4P1
Phone: (613) 722-2090
Fax: (613) 722-3318

BRITISH COLUMBIA

British Columbia Ministry of Environment, Lands and Parks
2975 Jutland Road
P.O. Box 9374, STN PROV GOV
Victoria, B.C. V8W 9M4
Web site: www.env.gov.bc.ca
(The B.C. Ministry of Environment, Lands and Parks is the certification authority in British Columbia for the donation of ecological gifts.)

Ducks Unlimited Canada (B.C.)
954A Laval Crescent
Kamloops, B.C. V2C 5P5
Phone: (604) 374-8307
Fax: (604) 374-6287
Web site: www.ducks.ca

Grasslands Conservation Council of British Columbia
727 Dominion Street
Kamloops, BC V2C 2X8
Phone/Fax: (250) 374-5721

The Land Conservancy of British Columbia
5793 Old West Saanich Road
Victoria, B.C. V9E 2H2
Phone: (250) 479-8053; Fax: (250) 744-2251
Web site: www.conservancy.bc.ca

Land Trust Alliance of British Columbia
204-338 Lower Ganges Road
Saltspring Island, BC V8K 2V3
250-538-0112
http://www.island.net/~ltabc

The Nature Conservancy of Canada (B.C.)
202 - 26 Bastion Square
Victoria, BC V8W 1H9
Phone: (250) 479-3745; Fax: (250) 479-0546

Nature Trust of British Columbia
808 - 100 Park Royal South
West Vancouver, B.C. V7T 1A2
Phone: (604) 925-1128; Fax: (604) 926-3482

Rocky Mountain Elk Foundation
S11 - C104, RR #1
Chase, B.C. V0E 1M0
Web site: www.rmef.org

Turtle Islands Earth Stewards
Box 3308
Salmon Arm, B.C. V1E 4S1
Phone: (604) 832-3993
Toll-free: 1-888-917-TIES
Fax: (604) 832-9942
E-mail: ties@jetstream.net
Web site: www.ties.bc.ca

West Coast Environmental Law Research Foundation
1001 - 207 West Hastings Street,
Vancouver, BC, V6B 1H7
1-800-330-WCEL
Web site: www.wcel.org

ALBERTA

Alberta Conservation Association
P.O. Box 40027
Baker Centre Postal Outlet
Edmonton, Alberta T5J 4M9
Phone: (780) 427-5192
Fax: (780) 422-6441

Alberta Fish and Game Association
6924 - 104 Street
Edmonton, Alberta T6H 2L7
Phone: (780) 437-2342
Fax: (780) 438-6872
Web site: www.afga.org

Alberta Sport Recreation, Parks and Wildlife Foundation
8th Floor, 10405 Jasper Avenue
Edmonton, Alberta T5J 3N4
Phone: (780) 422-1097
Fax: (780) 427-5980

Ducks Unlimited Canada (Alberta)
Suite 202, 10470 - 176 Street
Edmonton, Alberta T5S 1L3
Phone: (780) 498-2002
Fax: (780) 489-1856
Web site: www.ducks.ca

Environment Canada (Canadian Wildlife Service)
Twin Atria Building, Second Floor
4999 - 98 Avenue
Edmonton, Alberta T6B 2X3
(The Canadian Wildlife Service in Edmonton is the certification authority in Alberta for the donation of ecological gifts.)

Environmental Law Centre
Suite 204, 10709 Jasper Avenue
Edmonton, Alberta T5J 3N3
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Fax: (780) 424-5153
Toll-free: 1-800-661-4238

The Nature Conservancy of Canada (Alberta)
Suite 320, 602 - 11th Avenue S.W.
Calgary, Alberta T2R 1J8
Phone: (403) 294-7064
Fax: (403) 265-8263
Toll-free: 1-877-262-1253
Web site: www.natureconservancy.ca

Rocky Mountain Elk Foundation (Alberta)
P.O. Box 940
Rocky Mountain House, Alberta T0M 1T0
Phone: (403) 845-6492
Fax: (403) 845-2410
Web site: www.rmef.org

Southern Alberta Land Trust Society (SALTS)
P.O. Box 45016
High River, Alberta T1V 1R7
Phone: (403) 652-4784
Fax: (403) 652-4786
Toll-free: 1-877-999-SALT
E-mail: salts@telusplanet.net
Web site: www.salts-landtrust.org

SASKATCHEWAN

Ducks Unlimited Canada (Saskatchewan)
P.O. Box 4465
1606 4th Avenue
Regina, Saskatchewan S4P 3W7
Phone: (306) 569-0424
Fax: (306) 565-3699
Web site: www.ducks.ca

Home Place Conservancy of Saskatchewan
57 Malone Crescent
Regina, Saskatchewan S4S 5J4
Phone: (306) 586-9268
Fax: (306) 586-4634

Meewasin Valley Authority
Suite 402, 3rd Avenue South
Saskatoon, Saskatchewan S7K 3G5
Ph: (306) 665-6887; Fax: (306) 665-6117

The Nature Conservancy of Canada (Saskatchewan)
Rm 101, 2022 Cornwall Street
Regina, Saskatchewan S4P 2K5
Phone: (306) 787-6987; Fax: (306) 787-0780
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Nature Saskatchewan
Room 206, 1860 Lorne Street
Regina, Saskatchewan S4P 2L7
Phone: (306) 780-9273; Fax: (306) 780-9263

Rocky Mountain Elk Foundation (Saskatchewan)
1416 Athabaska West
Moose Jaw, Saskatchewan S6H 6E1
Phone: (306) 691-2854; Fax: (306) 691-2856
Web site: www.rmef.org

Saskatchewan Department of Environment and Resources Management
Room 438, 3211 Albert Street
Regina, Saskatchewan S4S 5W6
(The Saskatchewan Department of Environment and Resources Management is the certification authority in Saskatchewan for the donation of ecological gifts.)

Saskatchewan Wetland Conservation Corporation (SWCC)
Suite 202, 2050 Cornwall Street
Regina, Saskatchewan S4P 2K5
Phone: (306) 787-0726
Fax: (306) 787-0780

Saskatchewan Wildlife Federation Habitat Trust Fund
444 River Street West
Moose Jaw, Saskatchewan S6H 6H6
Phone: (306) 693-9022; Fax: (306) 692-4370

MANITOBA

Delta Waterfowl Foundation
R.R. #1, Portage la Prairie, Manitoba R1N 3A1
Phone: (204) 726-9555
Web site: www.deltawaterfowl.com

Ducks Unlimited Canada (Manitoba)
Oak Hammock Marsh Conservation Centre
P.O. Box 1160
Stonewall, Manitoba R0C 2Z0
Phone: (204) 467-3000; Fax: (204) 467-9028
Web site: www.ducks.ca

Environment Canada (Canadian Wildlife Service)
Twin Atria Building, Second Floor
4999 - 98 Avenue
Edmonton, Alberta T6B 2X3
(The Canadian Wildlife Service in Edmonton is the certification authority in Manitoba for the donation of ecological gifts.)

Manitoba Habitat Heritage Corporation (MHHC)
200 - 1555 St. James Street
Winnipeg, Manitoba R3H 1B5
Phone: (204) 784-4354
Fax: (204) 784-4359

Manitoba Naturalists Society
401 - 63 Albert Street
Winnipeg, Manitoba R3B 1G4
Phone: (204) 943-9029

MWF Habitat Foundation
70 Stevenson Road
Winnipeg, Manitoba R3H 0W7
Phone: (204) 633-5967
Fax: (204) 632-5200

The Nature Conservancy of Canada (Manitoba)
298 Garry Street
Winnipeg, Manitoba R3C 1H3
Phone: (204) 942-6156
Fax: (204) 943-2261

UNITED STATES

American Farmland Trust
1200 - 18th Street, NW, Suite 800
Washington, D.C. 20036
Phone: (202) 331-7300
Fax: (202) 659-8339
E-mail: info@farmland.org
Web site: www.farmland.org

Land Trust Aliance
1319 F Street, NW, Suite 501
Washington, D.C. 20004-1106
Phone: (202) 638-4725
Fax: (202) 638-4730
Web site: www.lta.org

Montana Land Reliance
107 W. Lawrence
P.O. Box 355
Helena, MT 59624
Phone: (406) 443-7027
Fax: (406) 443-7061

Sonoran Institute
201 S. Walace
Bozeman, Montana 59715
Phone: (406) 587-7331
Fax: (406) 587-2027

Sonoran Institute
7650 E Broadway, Suite 203
Tucson, Arizona 85710
Phone: (520) 290-0828
Fax: (520) 290-0969
E-mail: sonoran@sonoran.org
Web site: www.sonoran.org

BEYOND THE RANGELAND CONFLICT: TOWARD A WEST THAT WORKS. By Dan Tagget with portraits by Jay Dusard. Publshed by the Grand Canyon Trust and Gibbs Smith; Flagstaff, AZ: 1995.

(American) An inspiring book about the possibilities of cooperation and innovation on ranches in the American West, this book highlights the work on ten different ranches in New Mexico, Colorado, Arizona, Montana, Wyoming, Utah, Nevada and Mexico.

CREATING SUCCESSFUL COMMUNITIES: A GUIDEBOOK TO GROWTH MANAGEMENT STRATEGIES. By Michael A. Mantell, Stephen F. Harper, and Luther Propst. Produced by The Conservation Foundation and Island Press; Washington, DC:1990.

(American) This 233-page book provides a number of strategies for effective participation in guiding compatible community development.

CONSERVATION EASEMENTS: A LANDOWNER'S GUIDE. Produced by the Southern Alberta Land Trust Society. High River, AB: 2000.

This 20-page booklet was designed specifically for the agricultural landowner, and describes the benefits, the prep work, the procedure and the tax implcations related to granting a conservation easement.

CONSERVATION EASEMENT GUIDE FOR ALBERTA. By Arlene Kwasniak. Produced by the Environmental Law Centre (Alberta). Edmonton, AB: 1996.

This 72 page booklet provides a good description of the legal considerations of granting an easement in Alberta. It is written in a very readable question and answer format, and its appendices include the Alberta legislation pertaining to conservation easements and a sample easement. The ELC is planning a new edition by 2001.

ECOLOGICAL GIFTS: IMPLEMENTING PROVISIONS OF THE INCOME TAX ACT OF CANADA. Compiled by Clayton Rubec. Available from Environment Canada, Canadian Wildlfe Service. Ottawa, ON: 1998.

Applicable all across the country, this 45-page booklet outlines what is involved in having a gift of property (or an easement) certified as ecological sensitive so as to receive the maximum income tax benefit from the donation. Environment Canada put out the last version of this booklet in May, 1998. The most current update of this material can be found on their web site: www.ec.gc.ca/cws-scf/habitat/index_e.html.

FOR THE LOVE OF ALBERTA: WAYS TO SAVE YOUR NATURAL HERITAGE: Private Conservancy Guide for Alberta. By Lesley Patricia Curthoys. Published by Federation of Alberta Naturalists, Edmonton, AB: 1998.

Private land conservation tools are the focus of this 100-page book published by the Federation of Alberta Naturalists. The book includes a description of numerous tools for private conservation, and is sprinkled with several real-life examples.

FORGING NEW PROTECTIONS: PURCHASING DEVELOPMENT RIGHTS TO SAVE FARMLAND. By American Farmland Trust. Washington, DC: 1996. Available from the American Farmland Trust (800) 370-4879.

(American) Prepared in cooperation with Michigan State University's Institute for Public Policy and Social Research, this 80-page report includes details on the design of a purchase of development rights program in Peninsula Township, Michigan, and provides numerous technical appendices.

GIVING IT AWAY: TAX IMPLICATIONS OF GIFTS TO PROTECT PRIVATE LAND. By Ann Hillyer and Judy Atkins. Produced by the West Coast Environmental Law Research Foundation. Vancouver, BC: 2000.

This 85-page booklet provides a detailed look at the tax implications of giving to protect private land in B.C.. It includes sections on income tax aspects, gift planning and property tax. Available from their web site: www.wcel.org.

HERE TODAY, HERE TOMORROW: LEGAL TOOLS FOR THE VOLUNTARY PROTECTION OF PRIVATE LAND IN BRITISH COLUMBIA. By Barbara Findlay and Ann Hillyer. Produced by the West Coast Environmental Law Research Foundation. Vancouver, BC: 1994.

This 216-page book is a legal primer for British Columbians interested in private land conservation. Though somewhat out of date, it still provides a good overview of the strategies, legal terms and legal tools you need to know about to enact your personal goals for land conservation.

KEEPING THE FAMILY IN THE FAMILY RANCH: PRIVATE LAND CONSERVATION IN THE WEST by John Covert. Produced by the Colorado Cattlemen's Agricultural Land Trust, Arvada, Colorado: 1997.

(American) This publication provides eight case studies of American agricultural landowners who have used a variety of land planning tools to accomplish their individual goals and keep agricultural land in production.

LEAVING A LIVING LEGACY: USING CONSERVATION COVENANTS IN B.C. By William J. Andrews and David Loukidelis. Produced by the West Coast Environmental Law Research Foundation. Vancouver, BC: 1996.

This guidebook provides a comprehensive look at the planning and legal components of British Columbia's conservation covenants, including sections on objectives and planning, enforcement, tax issues, frequently asked questions, applicable statutes, and sample covenants. Available from their web site: www.wcel.org.

THE NEW FRONTIERS OF RANCHING: BUSINESS DIVERSIFICATION AND LAND STEWARDSHIP. By Ben Alexander. Produced by the Sonoran Institute, Tucson, AZ and Bozeman, MT: 2000.

(American) This guidebook outlines the financial chalenges facing family ranchers in rapidly growing regions of the West and explores several areas of business diversification – niche marketing, guest ranching, small business development, and innovative management practices – that allow ranches to become more financially viable and ecologically sustainable. It describes these areas of diversification in detail, outlines successful examples of diversification from around the West, and provides references for further assistance and information. Available from the Sonoran Institute.

PRESERVING FAMILY LANDS: ESSENTIAL TAX STRATEGIES FOR THE LANDOWNER AND PRESERVING FAMILY LANDS: BOOK II - More Planning Strategies for the Future. By Stephen J. Small; Landowner Planning Center, Boston, MA: 1992 and 1997.

(American) Written by a leading tax attorney, these handbooks provides an overview of conservation land options for landowners to protect their land, reduce estate taxes, and pass the land on to their heirs.

SAVING THE FARM: A HANDBOOK FOR CONSERVING AGRICULTURAL LAND. By American Farmland Trust. Washington, DC: 1990. Available from the American Farmland Trust (800) 370-4879.

(American) This 150-page book offers comprehensive information on agricultural land conservation in California. It provides the tools for implementing effective farmland conservation programs, offering inspiring thoughts on subjects such as zoning techniques, general plan policies and raising funds for conservation programs. The appendices feature model policies and programs from California, although its practical models and advice have applications across the continent.

YOUR LAND IS YOUR LEGACY: A GUIDE TO PLANNING FOR THE FUTURE OF YOUR FARM.
By Jeremiah P. Cosgrove and Julia Freedgood. Washington, DC: 1999. Produced by the American Farmland Trust.

(American) An excellent guide to estate planning for agricultural operators. The 66-page booklet is both an informational guide and a workbook, taking you through the steps of identifying your estate planning goals and priorities. Includes several relevant case studies.

Appendix E Glossary

(The terms in this glossary are not intended to be rigorous definitions. They are intended to give you a basic knowledge of certain concepts so you will be able to follow the information in this guidebook more easily.)

Actuarial tables – life expectancy data based on statistics.

Adjusted cost base – in general, this is the price you originally paid for an asset (such as ranch land), subject to various adjustments.

Agricultural Land Reserve (ALR) – a land use system intended to preserve British Columbia's ability to retain its food production in perpetuity. The governing Act is one of the most senior pieces of legislation, and offers systematic control at all levels (see Appendix B for more detail).

Annuity – a fixed periodic payment based on an investment and the duration of payments.

Appraisal – a professionally determined estimate of the value of a property based on sales of comparable property or a property's income potential.

Appreciation (in value) – increase in the value of a property due to improvements and inflation.

Assessment – the value placed on a piece of property by a taxing authority for the purpose of calculating property tax.

Baseline report – a professional analysis of a property's flora, fauna, and valuable natural features used as a basis for monitoring a conservation easement; also called a baseline assessment or resource inventory.

Beneficiary – a person entitled to receive distributions from a Will, trust, or insurance policy.

Building site – a designated site, identified in a conservation easement, which a landowner can reserve for a future residence.

Bundle of rights – a term used to describe all of the rights of property ownership. All the possible rights (the right to mine, build, cut timber, use for a residence, transfer, lease, etc.) can be compared to a bundle of sticks, each of which may be transferred or given up separately.

Canada Customs and Revenue Agency (CCRA) – the new name for Revenue Canada.

Capital gain – gain from the disposition of property in excess of the adjusted cost base (or the property's value on the relevant Valuation Day in 1971).

Conservation agreement – the term used in Manitoba for a tool essentially the same as a conservation easement.

Conservation covenant – the term used in British Columbia for a tool essentially the same as a conservation easement.

Conservation easement – a legal agreement, usually between a landowner and a conservation organization or agency, and usually negotiated in perpetuity, that limits the uses and land-use changes an owner may make. The holder of the easement agrees to monitor the property and enforce the limitations.

Covenant (or restriction) – a written agreement contained in a contract, lease, deed, or other form of agreement.

Deed – a legal document by which property ownership is transferred from one owner to another.

Deed restriction – restrictive covenants, placed within a deed, that guide future uses of a property.

Devise (donation by devise) – a gift occurring at the time of death by stipulation in a Will.

Donee – one who receives a donation.

Donor – one who makes a donation.

Easement – a right that one has in the land of another. See also Conservation easement.

Easement holder – a qualified charitable organization or government agency that assumes long-term responsibility for monitoring and enforcing a conservation easement.

Equalizing estate distribution - creative planning that allows parents who wish to equalize the distribution of closely held business interests, such as a ranch, to two or more children when one child desires to continue to operate the business and the other(s) have no such interest (see Chapter 3 for a more complete description).

Estate – one's property and possessions at the time of death.

Executor(trix) – a person named to carry out provisions of a Will.

Fair market value – the price a willing buyer would pay a willing seller, neither being under any compulsion to buy or sell and both being fully knowledgeable of relevant facts.

Fee (fee interest or fee simple interest) – technically, all the legal rights in property; informally, ownership of land.

Highest and best use – the most profitable legal use to which a parcel of land is likely to be put. Highest and best use often determines market value.

In perpetuity – without end.

Installment sale – a sale in which an entire property is gradually transferred to another owner. May also refer to a sale in which the price is paid in specified amounts over a period of time until the entire sale price is paid.

Land trust – a qualified charitable organization that helps landowners voluntarily conserve their properties for conservation, historic, wildlife, scenic or other values.

Lease – a contract between two parties, made for a specific time period, governing use of and responsibility for a given property.

Limited development – building or development that does not interfere with a land's conservation value. Portions of a property that are not developed are often restricted with conservation easements.

Management agreement – a written contract, generally between a landowner and an organization or agency, committing one or both parties to certain responsibilities in caring for a property.

Option-to-purchase – a time-limited right to acquire a property at a fixed price.

Partial interest – a deeded right or share in the ownership of land. Often referred to as interest in property.

Property tax – a tax assessed and collected by the local government of the municipality in which a property is located; property taxes are based on appraiser estimates of value.

Purchase of Development Rights (PDR) program – a conservation program whereby a local or provincial government (or conservation non-government organization) dedicates a dependable source of funds to the purchase of development rights for conserving land.

Qualified appraiser – an appraiser having a professional designation and experience acceptable to the CCRA.

Real property (or realty) – land, buildings, or other permanent improvements associated with land.

Revenue Canada – the former name of the Canada Customs and Revenue Agency.

Right of first refusal – a commitment a landowner makes to offer a property to a specified individual or organization at the same terms as those in a future bona fide offer.

Sale/leaseback – procedure by which a charitable organization buys an unrestricted parcel, imposes a restriction on it, then re-sells or leases it.

Stewardship – long-term responsibility for the care and management of land.

Taxes on death – the taxes which the estate of a deceased person is required to pay in the year of that person's death. On the date of death, the deceased is deemed to have disposed of all of his or her capital assets at fair market value.

Title – evidence that one has legal ownership of a property. Title documents are recorded with the land titles office in the municipality where the property is located.

Trust – Placing property under the management and control of anotherfor the benefit of an identifiable person or class of persons.

Footnotes

{1} Finley, Bruce. November 15, 1992. "Urban Sprawl Devouring Open Spaces." Denver Post, p.1.

{2} Though most jurisdictions use the term Conservation Easement, British Columbia uses the term Conservation Covenant and Manitoba uses the term Conservation Agreements. These terms describe tools which are essentially the same. For the sake of clarity and brevity, the term Conservation Easement is used throughout this guidebook to refer to all.

{3} Environment Canada (Canadian Wildlife Service) maintains a list of those organizations across the country qualified to receive gifts of ecologically sensitive land. See their contact information in Appendix C.
{4} Land Trust Alliance web site.

{5} A 1990 survey conducted by the U.S. Department of Agriculture revealed that for every dollar of tax revenue collected from low density residential land uses, local governments spent an average of $1.36 to provide services. By contrast, for every dollar received from agricultural land uses, only 21 cents is spent on services.

{6} Contact the Canadian Wildlife Service (Environment Canada) for a list of these organizations and agencies in your area.

{7} Currently, the normal capital gain inclusion rate is 66.6%.

Endnotes

[1] Federal tax credits for donations are calculated at 29%, but this example estimates the impact of including the provincial tax benefit as well.

[2] The federal charitable tax credit is 17% on the first $200 of the donation and 29% beyond that. Provincial tax savings are in addition to the federal tax savings and vary from province to province depending on the applicable provincial tax rate. For the purpose of illustration, a combined tax credit rate of 40% has been used.

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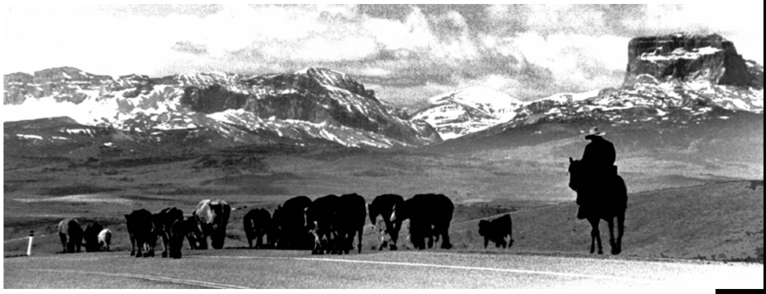

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