

Conservation easements can help if: A) wooden stakes and orange flagging tape are the dominant crops in your area; B) land surrounding your operation is selling by the square foot (sq. ft.); C) it looks like the Internal Revenue Service (IRS) may end up inheriting more of your ranch than your kids; or D) all of the above.

Go with D — all of the above. By giving up the development rights on a tract of land, you can end up with cash and/or major tax benefits. Best of all, you and your cows can pretty much go on with business as usual.

“There is a lot of development around us, and land is going for \$10,000 to \$20,000 an acre,” Carbondale, Colo., rancher Bill Fales says. “It is hard to make cows pay that much.”

Fales owns a 5,000-acre tract of land in partnership with six other families and entered a conservation easement in 1997. “Almost all of us wanted to see the land protected,” he explains. “The easement took the development value off the land. That’s great.”

Fales and the other ranchers received both cash and tax benefits when they signed the easement. He says, “We are very pleased with it. We don’t run our operation any differently.”

For Deer Park, Fla., rancher Billy Kempfer, the incentive was cash for estate planning needs. In the 1990s, his attorneys and accountant told Billy and his brother,

Reed, they needed to buy out the remainder of their mother’s interest in the ranch to avoid being challenged by the IRS on some of their earlier estate planning work.

Pass It On

Conservation easements help keep cattle operations in the family.

Story & photos by *Becky Mills*

“With this conservation easement, we are as close to ‘having our cake and eating it, too,’ as you can get,” Billy says. “Our attorney, Marty Smith, did a heck of a job of negotiating for us.”

Terms of the contract

Under the terms of the easement, the Kempfers are allowed to run cows on the land, hunt and harvest timber. “As part of the agreement, we did give up grazing on part of our wetlands for all but 120 days of the year, but can graze 2,000 acres of state land when we are grazing it,” Billy says.

Unbelievably, at least in Florida, the Kempfers were also allowed to put a dike around 700 acres of the property, which they planted in improved pasture. “If it wasn’t for the dike, this land would be under two feet of water during part of the wet season,” Billy remarks. In addition, the Kempfers are allowed to put up four homesteads on the land.

Fales also received concessions. The local county is a co-grantee, and it couldn’t afford complete development rights, so Fales and the other owners are allowed to build 12 houses in specified locations. “By

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► The GRP offers producers less binding options than typical conservation easements.

► The Kempfers cut a fire break/buffer between their regular ranchland and the land they placed in a conservation easement.

Get your feet wet

If you're hesitant to put your operation in a permanent conservation easement, there are less binding agreements that can benefit your ranch and the environment, too. Help is as close as your local Natural Resources Conservation Service (NRCS) office.

The Grassland Reserve Program (GRP) is a nationwide U.S. Department of Agriculture (USDA) 2002 Farm Bill program that allows farmers and ranchers to enroll their grass-, range-, or pastureland for 10-, 15-, 20-, or 30-year rental agreements. Permanent and 30-year easements are also available through the program.

It doesn't take much — 40 acres is the minimum. "In some states the acreage has to be contiguous, but not here in Georgia," says Holli Kuykendall, USDA-NRCS Grassland Water Quality specialist for the state. In adapting the program to the Southeast, Georgia waived the contiguous acreage requirement.

Sign-up for the GRP is continuous. However, the bad news is that the \$49.7 million allocated to the GRP isn't enough to even begin to cover the flood of applications.

To give NRCS a fair way to allocate the money, GRP applications are evaluated and ranked with the help of a worksheet. Heading the list is the land's conversion threat to nonagricultural use or cropland. In Georgia, a producer's management strategies for their pasture and grassland also come into play.

Kuykendall explains, "In addition to the conversion threat, we want the best managed and maintained lands reserved as a result of the program. Our worksheet questions reflect ways producers intensify their management to support grazing and protect their resources."

In addition, NRCS conservationists look at the biodiversity of the acreage offered for the program, as well as the land surrounding it. "Is the offered acreage a mix of warm- and cool-season forages so it can be grazed year-round? Does it contain legumes? Is acreage with native warm-season grasses being offered? Are buffers and field borders used? Positive responses to these factors receive extra points on Georgia's GRP worksheet," Kuykendall explains.

Kuykendall says the annual rental rates are based on a percentage of county-specific grazing land values multiplied by the acres entered in the program.

For more information, contact your local NRCS office, or go to www.nrcs.usda.gov/programs/GRP/index.html.

Pass It On

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leaving a few house sites in carefully chosen locations, we will be able to sell the sites for a real premium," he comments.

Fales and the other ranchers gave the Colorado Cattlemen's Agricultural Land Trust (CCALT), also a co-grantee, a \$10,000 donation so they could monitor the easement in future generations.

Lynne Sherrod, Steamboat Springs, Colo., rancher and executive director of CCALT, comments, "As far as purchased easements go, money usually comes with strings. Also, the way the easement reads and the restrictions both vary greatly depending on the mission of the organization that the land owners choose to work with, as well as the source of the funding."

She adds, "Donated easements often include fewer management restrictions, depending on the individual land trust. That's why it is so important that landowners make certain they are working with one that understands their needs and lifestyle."

Don't be fooled

Lest you still think a conservation easement is a no-brainer, cheap or easy, think again. The Kempfers originally started

working with the Saint John's River Water Management District, their grantee, in the early 1980s. They went through two failed attempts and \$10,000 in attorney fees before even starting on their current easement, which was completed the last day of 1999.

And you had better be a detail-oriented person. Fales says, "We really paid a lot of attention to the contract. We

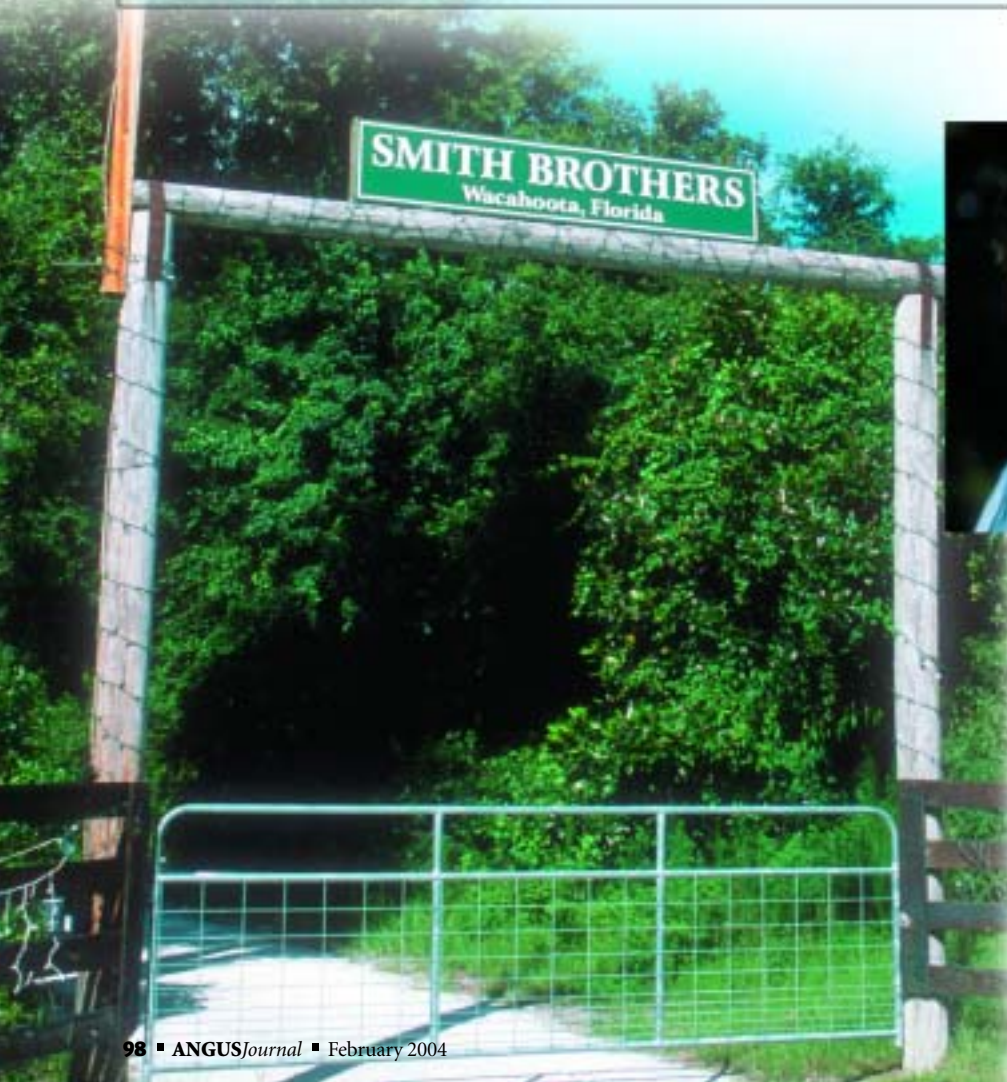
scrutinized every dot on every 'i' and every cross on every 't.'"

An attorney experienced with conservation easements is a necessity, as well as a good accountant. Fales, a director of CCALT, says, "In CCALT, we are very firm



►Attorney and rancher Marty Smith says conservation easements have their place, but he doesn't want to tie up his family's land permanently.

►Left: The Smith Bros.' Florida ranch has been in the family for more than 150 years.



on that point. A conservation easement is a very complex document, and you have to make sure you understand what it says. We want to make sure ranchers are very clear on what they are doing and make it work for themselves.”

Smith, the Kempfer’s easement attorney, says attorney fees generally run the same on a conservation easement as they do on a real estate transaction — around 5%. However, this varies according to the location of the land, the type of easement, how much work the attorney does, and whether the easement is donated or purchased.

The big issue, though, is the length of a conservation easement.

“It is forever,” Kempfer states. “That’s why I hate it. You may not be selling your land but by the same token you are selling most of the rights for generations to come.

“Conservation easements have a purpose, but if my great-grandchildren still own the land, it won’t have any development value except as open space,” he continues. “Most land in Florida is valued on development potential.”

Although development is still miles away, there is potential. The Kempfer operation, which has been in the family since the 1880s, is between Walt Disney World and the East Coast. And between Billy and Reed, there are five sons involved in the operation, as well as a crop of grandchildren coming along.

“Forever is a very long time,” Sherrod agrees. “Conservation easements are only one small part of a comprehensive estate plan. Each set of landowners have a set of tough decisions to make for their operations.”

“It is a really, really major step,” Larry Kueter, a Denver, Colo., attorney, emphasizes. “You are giving away something valuable, especially with land near a city where there is development pressure. You can’t undo it.”

In addition to being an attorney, Smith manages his family’s Marion County, Fla., ranch. Even though the land has been in the family for more than 150 years, he is hesitant to put it in a conservation easement. “The property values here have gone past the point where a conservation easement pays. We don’t have any intention to change the use of this property, but we don’t want to lock ourselves in.”

Smith adds, “There is a big effort to get federal Farm Bill money set aside for 30- to 40-year leases. That lets you plan for a generation. But right now, that’s not available.”

Still, he says conservation easements definitely have their place. Besides bringing in money for estate planning purposes at the Kempfers, Smith says, “It is a remote piece of land, and the usability and carrying capacity of the ranch actually increased. We were able to negotiate a pretty good deal.”

“We understand conservation easements are not for everyone,” Sherrod says. “But conservation easements can devalue the land to the point where the next generation can afford to inherit it.”

She adds, “Urban growth and sprawl are a threat to our ranchers, and conservation easements can help keep ranchers on their land. That benefits all of society.”

Information, please

If you think a conservation easement could be in your future, where would you begin your search for a land trust or grantee? With more than 3,000 acres of farmland per day going down the development drain, there is no shortage of conservation groups and local and state government agencies willing to negotiate for the development rights to your place. But surprisingly, your state cattlemen’s association is a good start.

In 1995, the Colorado Cattlemen’s Association formed the nonprofit Colorado Cattlemen’s Agricultural Land Trust (CCALT) to help ranchers protect their land. As the first land trust in the nation affiliated with a state cattlemen’s association, CCALT is run by ranchers. It also started a trend. In addition to Colorado, five state cattlemen’s organizations have land trusts, including California, Nevada, Kansas, Oregon and Wyoming. Other cattlemen’s associations across the country are also working to develop land trusts.

The next stop is the national organization of land trusts, the Land Trust Alliance (LTA). Denver, Colo., attorney Larry Kueter says the LTA can steer a cattle producer to local organizations that deal in conservation easements.

Kueter adds, “The American Farmland Trust (AFT) is also a good source of information.”

Ocala, Fla., attorney Marty Smith advises, “Ask around. A lot of these environmental groups are figuring out they are better off with cows. The Nature Conservancy rented space at our state cattlemen’s convention.”

Across the country, county governments in areas threatened by development are also cooperating with ranchers on conservation easements.

Deer Park, Fla., rancher Billy Kempfer says, “Any time you have a piece of land in its native state, and it is under the threat of development, there will be some state agency that wants to buy it. They’ll find you.”

Here is the contact information for two national groups:

American Farmland Trust
1200 18th St. N.W., Ste. 800
Washington, D.C. 20036
(202) 331-7300
Fax: (202) 659-8339
info@farmland.org
www.farmland.org

Land Trust Alliance
1331 H St. N.W., Ste. 400
Washington, D.C. 20005-4734
(202) 638-4725
Fax: (202) 638-4730
lta@lta.org
www.landtrustalliance.org



► The Kempfers have owned their Deer Park, Fla., ranch since the 1880s.