

HOUSE BILL NO. 675
INTRODUCED BY R. MAEDJE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE TERMS AND CONDITIONS OF A CONSERVATION EASEMENT MUST REFLECT THAT THE CONSERVATION EASEMENT IS NOT THE DOMINANT ESTATE AND MUST BE INTERPRETED BY A COURT IN THE LIGHT MOST FAVORABLE TO THE UNDERLYING PROPERTY OWNER; AMENDING SECTIONS 76-6-104, 76-6-105, 76-6-203, 76-6-210, AND 76-6-211, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 76-6-104, MCA, is amended to read:

"76-6-104. Definitions. The following terms whenever used or referred to in this chapter ~~shall~~ have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Comprehensive planning" means planning for development and ~~shall include~~ includes:

(a) preparation of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, including transportation facilities, together with long-range fiscal plans for ~~such~~ the development as a guide for long-range development;

(b) programming and financing plans for capital improvements;

(c) coordination of all related plans and planned activities at both the intragovernmental and intergovernmental levels; and

(d) preparation of regulatory and administrative measures in support of the foregoing.

(2) "Conservation easement" means an easement or restriction, running with the land and assignable, whereby an owner of land voluntarily relinquishes to the holder of ~~such~~ the easement or restriction any or all rights to construct improvements upon the land or to substantially alter the natural character of the land or to permit the construction of improvements upon the land or the substantial alteration of the natural character of the land, except as this right is expressly reserved in the instruments evidencing the easement or restriction. The terms and conditions of a conservation easement must reflect that the conservation easement is not the dominant estate and must be interpreted by a court in the light most favorable to the underlying property owner.

(3) "Open-space land" means any land ~~which~~ that is provided or preserved for:

(a) park or recreational purposes;

- (b) conservation of land or other natural resources;
- (c) historic or scenic purposes; or
- (d) assisting in the shaping of the character, direction, and timing of community development.
- (4) "Public body" means the state, counties, cities, towns, and other municipalities.
- (5) "Qualified private organization" means a private organization:
 - (a) competent to own interests in real property;
 - (b) ~~which that~~ qualifies and holds a general tax exemption under the federal Internal Revenue Code, section 501(c); and
 - (c) whose organizational purposes are designed to further the purposes of this chapter.
- (6) "Urban area" means any area ~~which that~~ is urban in character, including surrounding areas ~~which that~~ form an economic and socially related region, taking into consideration such factors as present and future population trends and patterns of urban growth, location of transportation facilities and systems, and distribution of industrial, commercial, residential, governmental, institutional, and other activities."

Section 2. Section 76-6-105, MCA, is amended to read:

"76-6-105. Construction of chapter. (1) To the extent that the provisions of this chapter are inconsistent with the provisions of any other law, the provisions of this chapter are controlling. The powers conferred by this chapter are in addition and supplemental to the powers conferred by any other law.

(2) ~~This~~ Except as provided in subsection (3), this chapter may not be construed to imply that any easement, covenant, condition, or restriction that does not have the benefit of this chapter is not enforceable based on any provisions of this chapter. This chapter does not diminish the powers granted by any general or special law to acquire by purchase, gift, eminent domain pursuant to Title 70, chapter 30, or otherwise and to use land for public purposes.

(3) The terms and conditions of a conservation easement must reflect that the conservation easement is not the dominant estate and must be interpreted by a court in the light most favorable to the underlying property owner."

Section 3. Section 76-6-203, MCA, is amended to read:

"76-6-203. Types of permissible easements. ~~Easements~~ (1) Subject to subsection (2), easements or restrictions under this chapter may prohibit or limit any or all of the following:

- ~~(+)(a)~~ structures--construction or placing of buildings, camping trailers, housetrailer, mobile homes,

roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

~~(2)(b)~~ landfill--dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

~~(3)(c)~~ vegetation--removal or destruction of trees, shrubs, or other vegetation;

~~(4)(d)~~ loam, gravel, etc.--excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

~~(5)(e)~~ surface use--surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

~~(6)(f)~~ acts detrimental to conservation--activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

~~(7)(g)~~ subdivision of land--subdivision of land as defined in 76-3-103, 76-3-104, and 76-3-202;

~~(8)(h)~~ other acts--other acts or uses detrimental to ~~such~~ retention of land or water areas in their existing conditions.

(2) The terms and conditions of a conservation easement must reflect that the conservation easement is not the dominant estate and must be interpreted by a court in the light most favorable to the underlying property owner."

Section 4. Section 76-6-210, MCA, is amended to read:

"76-6-210. Enforcement. (1) ~~Conservation~~ Subject to subsection (3), conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement ~~shall~~ must be entitled to enter the land in a reasonable manner and at reasonable times to ~~assure~~ ensure compliance.

(2) ~~No~~ Subject to subsection (3), a conservation easement ~~shall be unenforceable on account of~~ is enforceable even if there is a lack of privity of estate or contract or lack of benefit to particular land or ~~on account of such~~ if the conservation easement is not being an appurtenant easement or ~~because such~~ the easement is an easement in gross.

(3) The terms and conditions of a conservation easement must reflect that the conservation easement is not the dominant estate and must be interpreted by a court in the light most favorable to the underlying property owner."

Section 5. Section 76-6-211, MCA, is amended to read:

"76-6-211. Who may enforce easement. (1) ~~The~~ Subject to subsection (3), the owner of any estate in a dominant tenement or the occupant of ~~such the~~ tenement may maintain an action for the enforcement of an easement attached ~~thereto~~ to the tenement.

(2) ~~Public~~ Subject to subsection (3), public bodies holding conservation easements shall enforce the provisions of these easements.

(3) The terms and conditions of a conservation easement must reflect that the conservation easement is not the dominant estate and must be interpreted by a court in the light most favorable to the underlying property owner."

NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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