

**This guide provides a general overview of conservation easements. It is not a substitute for consulting state and federal laws or seeking legal counsel.**

**Montana Environmental Quality Council 2010**



**Conservation Easements:**

**20**

**Things Everyone Should Know**

**1. What is a conservation easement?**

A voluntary legal agreement that limits the use of land. Property ownership comes with many rights. Most rights involve using the land farming, logging, or subdividing are a few examples. The landowner also has a right to limit the use of the property. The landowner maintains ownership and is compensated for limiting the uses as negotiated in the agreement.

**2. What is the purpose of a conservation easement?**

To preserve the ecological, recreational, cultural, agricultural, or historic resource of a property. Typically, this means prohibiting some new uses on tracts of land large enough to protect the specified resource. Conservation easements may limit subdivision, excavation, or acts detrimental to conserving the natural values of the property.

**3. Who may sell or donate a conservation easement?**

Any landowner whose property fulfills the requirements of a conservation easement.

**4. Who may buy or hold a conservation easement?**

Any public body, including a federal, state or local government agency; or a nonprofit organization that is competent to own property, holds federal tax exempt status under the Internal Revenue Code, and conserves open space as part of its mission.

**18. What happens if land under a conservation easement is sold or passed on to heirs?**

A conservation easement runs with the land. The new owner must comply with the terms of the conservation easement.

**19. How many conservation easements are there in Montana?**

A 2007 legislative audit found about 1,250 conservation easements covering more than 1.5 million acres of land, which represents less than 2% of Montana's acreage. Almost 99% of the land under conservation easements is owned by private parties. Many conservation easements are held by nonprofit land trusts, but government agencies, including the Montana Department of Fish, Wildlife, and Parks, are also major holders.

A 2009 update of the audit report found there were 1,331 conservation easements covering more than 1.8 million acres.

**20. Who keeps track of conservation easements?**

Conservation easements are recorded at the Clerk and Recorder's Office in the county where the land lies. Conservation easements can be viewed for a specific area or downloaded from the state Natural Resource Information System website at: <http://nris.mt.gov/gis/>

**14. If a conservation easement is placed on state or federal land, is there a tax break?**

No. Government agencies do not pay taxes, so there would be no tax deduction.

**15. How is the value of a conservation easement determined?**

An appraiser determines how much the restrictions of a conservation easement would devalue the land. The difference between the unencumbered value and the restricted value is the value of the conservation easement.

**16. Does a conservation easement reduce the fair market value of the land?**

Typically, yes. A parcel of land may be worth more as a subdivision than as agricultural land. The federal tax deduction is meant to offset the reduced land value.

**17. Who enforces the terms of the conservation easement?**

Representatives of the public body or nonprofit organization that holds the conservation easement may enter the land in a reasonable manner at reasonable times to monitor compliance.

**5. Who negotiates a conservation easement?**

A willing landowner and a public body or qualified nonprofit corporation.

**6. Does a conservation easement forbid agricultural operations or timber harvesting?**

Not usually. Since the goal of many conservation easements is to preserve open space, historic agricultural or forestry operations often continue. The land is still owned and managed by the party that sold or donated the conservation easement. The terms of the conservation easement, including what may and may not occur on the land, are negotiated between the landowner and the public body or organization holding the easement.

**7. Are conservation easements related to eminent domain, condemnation, or wilderness areas?**

No.

**8. Does a conservation easement automatically mean the public can access the land?**

No. The landowner retains control of the property. However, the parties may agree to allow public access as part of the negotiated agreement and the landowner may be compensated for allowing public access.

## 9. How long do conservation easements last?

Montana law requires a conservation easement to be granted for a term of at least 15 years, but many are granted in perpetuity. A conservation easement runs with the land and remains in place even if the land is sold.

## 10. How long is perpetuity?

Forever.

## 11. Why would someone give up a property right forever?

A landowner may want the land to always be protected. The easement must be in perpetuity to qualify for federal income tax and estate tax benefits. This guards against speculators who could receive a federal tax deduction for decades until the land rises in value and then subdivide it when the easement expires.

## 12. How does the federal tax break work?

The tax deduction is based on the effect the conservation easement would have on the landowner's property value. The reduced value for which the landowner is not compensated is considered a charitable contribution. This occurs if the easement is donated or if the easement is sold for less than fair market value. The rationale for the tax break is that the preservation of the land is of value to the public. To qualify for the tax break, the conservation easement must be:

- granted in perpetuity;

- donated or sold to a qualified organization, such as a government agency or a nonprofit land trust; and
- made for conservation purposes, including preservation of land use by the public for outdoor recreation or education, protection of wildlife habitat, preservation of farm or forest land for the public's scenic benefit or as part of a governmental conservation policy, or preservation of historic landscapes or buildings. The landowner must also secure a subordination of any mortgage or contract holders, procure an appraisal, and ensure that mineral right ownership does not inhibit the placement of the conservation easement.

As of April 2010, Congress had not renewed the tax incentive. However, there are proposals pending to extend the benefit. Interested parties should check with a local land trust for more information.

## 13. Is there a state tax break for conservation easements?

Montana does not provide property tax incentives for creating conservation easements. The law seeks to ensure that the creation of conservation easements is fiscally neutral for local governments. If an easement prohibits all farming on land classed for tax purposes as agricultural, the property would be reassessed. The assessed value of the land may not fall below the value it held in 1973. Finally, land cannot be reclassified solely on the basis of an easement; other changes in the land use must be taken into account. However, a grantor of an easement may claim a state income tax deduction for a charitable contribution if a portion of the easement is donated.