

Note: In January, the EQC asked staff to draft a brochure explaining the basics of conservation easements. This version is for discussion purposes only.

Conservation Easements: 20 Things Everyone Should Know

What is a conservation easement?

A conservation easement is a voluntary legal agreement that limits the use of property. Property ownership comes with many rights. Most of them deal with using the land in some way – farming, logging, or subdividing, to name a few. But a property owner also has a right to limit the use of the land. In the case of a conservation easement, a property owner may sell or donate a right – such as the right to develop – and be compensated for restricting or forfeiting that right while still maintaining ownership of the land.

What is the purpose of a conservation easement?

Typically, the purpose is to preserve property in its current, undeveloped state. Conservation easements may prohibit or limit such things as subdivision, excavation or acts detrimental to conserving the natural values of the property.

Who can sell or donate a conservation easement?

Any landowner whose property fulfills the requirements of a conservation easement. Typically, conservation easements are placed on large areas of open land.

Who can buy or hold a conservation easement?

Any public body, such as a state or local government agency, or a non-profit 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.

Who negotiates a conservation easement?

A willing landowner and public body or qualified organization.

Does a conservation easement on a farm or ranch mean no more agricultural operations or timber harvesting?

No. Since the goal of many conservation easements is to preserve open space, historic agricultural operations and other uses 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 what may not occur on the land – are negotiated between the landowner and the organization holding the easement.

Do conservation easements have anything to do with eminent domain, condemnation, or wilderness areas?

No.

Does a conservation easement mean the public can access the land?

No. The landowner retains control of the property. However, public access may be part of the voluntary negotiated agreement.

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.

How long is perpetuity?

Forever.

Why would someone give up a property right forever?

A landowner may want to know that the land will always be protected. Also, the easement must be in perpetuity to qualify for federal income tax and estate tax benefits. This is a way to guard 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.

How does the federal tax break work?

The tax deduction for conservation easements is based on the potential for an easement to result in a reduced land value and the amount of that reduced value is then considered a charitable contribution. This occurs whether the easement is sold or donated. The donation must meet three conditions:

1. Must be granted in perpetuity.
2. Must be donated or sold to a qualified organization, such as a government agency or a non-profit land trust.
3. Must be made for conservation purposes including preservation of land use by the public for outdoor recreation or education, protect wildlife habitat, preserve 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.

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 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 was 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 the charitable contribution.

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.

How is the value of a conservation easement determined?

The value is determined by an appraiser. To qualify for the federal tax break, a landowner must secure a subordination of any mortgage or contract holders, procure an appraisal and assure that mineral right ownership does not inhibit the placement of the conservation easement.

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 open agricultural land. The federal tax deduction is meant to offset this reduced land value.

Who enforces the terms of the conservation easement?

Representatives of the organization that holds the conservation easement may enter the land in a reasonable manner at reasonable times to assure compliance.

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

The conservation easement runs with the land and would stay in place.

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 percent of Montana's acreage. Almost 99 percent of the land under conservation easements is owned by private parties. Many conservation easements are held by non-profit land trusts, but government agencies, including the Montana Department of Fish, Wildlife and Parks also are major holders.

Who keeps track of conservation easements?

Conservation easements are recorded at the clerk and recorders office in the county where the land lies. Sometime in 2008, information about all conservation easements filed in Montana should be available through the state Natural Resource Information System.