



CONSERVATION  
EASEMENTS

**MONTANA  
LAND RELIANCE**

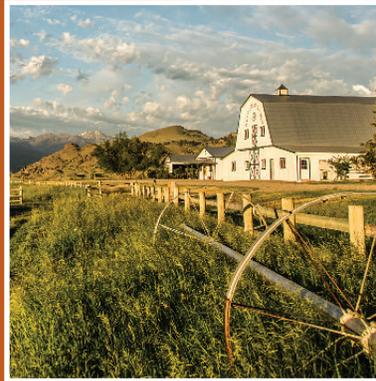


*Protecting Montana's Open Landscapes*

**The Montana Land Reliance (MLR) is a private, nonprofit, accredited land trust that partners with private landowners to permanently protect agricultural lands, fish and wildlife habitat, and open space.**

**MLR has been among the most effective land conservation organizations in the nation since its founding in 1978, conserving one million acres of Montana and counting. The largest statewide land trust in the country, MLR has played a leading role in championing conservation incentives that have facilitated conservation around the nation.**

**MLR holds more than 800 conservation easements across Montana, with landowners as diverse as the special places they have protected. These landowners have partnered with MLR to perpetually conserve landscapes in every corner of the state and the places in between.**



Alexis Bonogofsky



Alexis Bonogofsky



## WHY CONSERVATION EASEMENTS?

America loses more than an acre of farmland every minute and Montana loses 1,500 acres of open space to development each month.\* Conservation easements are effective tools that allow landowners to see the places they love forever protected and conserved.

From a land conservation perspective, easements are the only tool with the capacity to perpetually prevent inappropriate development on private lands containing some of the richest habitat and soils in the state. These lands are integral parts of ecosystems spanning both public and private land, and provide critical resources and habitat connectivity for Montana's fish and wildlife.

From an agricultural perspective, conservation easements protect Montana's agricultural heritage, local agricultural economies, and food supply. Conservation easements are also a tool that can help landowners pass working farms and ranches to future generations. Conservation easements protect Montana's heritage of open space, fish and wildlife habitat, and agriculture.

*\*The Disappearing West,*  
Center for American Progress

## THE VOLUNTARY PRIVATE LAND CONSERVATION EASEMENT PROCESS

- 1 MLR staff and landowner meet to review property and complete conservation easement checklist.
- 2 Project is presented to MLR staff for approval.
- 3 Project is presented to MLR Board of Directors for approval.
- 4 Letter of Board approval is sent to the landowner.
- 5 MLR staff begins easement drafting process reflecting landowner's expressed wishes for the property.
- 6 First draft of conservation easement is sent to the landowner for review (independent financial and legal counsel is recommended).
- 7 Landowner provides easement revisions to MLR staff.
- 8 MLR staff prepares mortgage subordination, if necessary, for landowner to negotiate with the lending institution.
- 9 MLR staff obtains a preliminary title commitment and requests a minerals title search if necessary.
- 10 MLR staff contracts for resource documentation report as required by the Internal Revenue Code.
- 11 MLR staff contracts, if necessary, for mineral remoteness test as required by the Internal Revenue Code.
- 12 Landowner has property appraised by qualified conservation easement appraiser.
- 13 Draft is sent to county planning board for review and advisory comments.
- 14 Final easement is signed by landowner and MLR representative.
- 15 Easement is recorded with the county.

*MLR is a 501(c)(3) tax-exempt corporation. MLR's Tax Identification Number is 81-0369262. MLR is independently audited annually, and audit copies are available upon request.*

This brochure is intended to provide an overview of the conservation easement process. It is not intended to provide definitive legal or tax advice. You should consult with your attorney, accountant, and financial advisor. If you need more specific information or would like to discuss a conservation easement donation, write or call MLR's offices, and/or visit MLR's website at [mtlandreliance.org](http://mtlandreliance.org).



John Lambing

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## WHAT IS A CONSERVATION EASEMENT?

**A conservation easement is a voluntary legal agreement between a landowner and a land trust like MLR that permanently limits the uses of the land in order to protect its conservation values.**

Think of land ownership as holding a bundle of rights that includes the right to subdivide, construct buildings, irrigate, harvest timber, restrict access, and lease or sell the property, among others. A landowner may sell or donate their entire interest in the property—the whole bundle of rights—or may part with just one or two of those rights. If a property owner wants to give away certain rights for the purpose of conservation, while

retaining other rights, he or she grants a deed of conservation easement to a land trust such as MLR.

The donation of an easement may qualify as a charitable contribution. As such, it may reduce income, estate, and gift taxes.

Regardless of changes in ownership, the conservation easement runs with the title and protects the land from inappropriate uses and development in perpetuity. The vast majority of conservation easements held by MLR have been donated by private landowners. In rare circumstances, MLR has purchased a conservation easement in a “bargain sale” from the landowner or has worked with landowners to take

*“Man needs space. He needs to be surrounded, when he can, by majesty. By the majesty of the mountains. By the majesty of the rivers. By the majesty of wildlife. These things are part of our heritage and should be preserved.”*

– A. B. Guthrie, Jr.

advantage of public funding programs, such as county open space initiatives and the Natural Resources Conservation Service’s Agricultural Lands Easement Program.

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## TERMS OF A CONSERVATION EASEMENT

The terms of a conservation easement spell out the uses that are consistent and inconsistent with the conservation goals of the landowner. Each conservation easement is tailored to the unique character of the land and the conservation goals of the owner.

### **Uses that can be allowed in a conservation easement:**

- Continued agricultural and silvicultural use
- Construction of agricultural infrastructure
- Sale, devise, gift, or other methods of transferring parcels, subject to terms of the easement
- Landowner control of access

- Additional family and employee residences compatible with conservation objectives
- Wildlife and fisheries protection, restoration, and enhancement projects
- Outfitting, guest ranching, and other small businesses
- Any and all uses not specifically prohibited

### **Uses typically restricted by a conservation easement include:**

- Subdivision for residential development
- Non-agricultural commercial activities
- Dumping of non-compostable or hazardous waste
- Surface mining
- Other uses that potentially interfere with protection of open space or habitat

### **Each conservation easement assigns three “positive rights” to MLR:**

- The right to preserve and protect the property according to mutually agreed upon terms
- The right (with applicable advance notification to the landowner) to enter the property to ensure compliance with easement terms (usually once a year)
- The right to “enjoin and restore” which assures that the landowner’s goals, as spelled out in the easement, are enforced

The terms of the easement do not negate or modify state or federal law. Specifically, a conservation easement cannot prevent condemnation.

## LEGAL REQUIREMENTS AND TAX BENEFITS

Although conservation easements are real property interests governed by Montana law, in order to qualify for the generous federal income tax deduction, certain requirements must be met. These include the following:

- The conservation easement must be granted on a specific parcel of real estate, in perpetuity. Mortgage and contract holders must agree to subordinate to the easement.
- The conservation easement must protect at least one of the following four conservation purposes:
  1. Preservation of relatively natural habitat for fish, wildlife, plants, or similar ecosystems
  2. Preservation of open space (including farmland and forest land) that will yield a significant public benefit, for the scenic enjoyment by the general public or pursuant to a clearly delineated federal, state, or local governmental conservation policy
  3. Preservation of land for education or outdoor recreation by the public
  4. Preservation of historically important land areas or structures.

- The conservation easement must prohibit uses that would be inconsistent with the protection of conservation purposes.
- The easement must be granted to a qualified organization with the commitment to protect the conservation purposes of the easement, such as MLR.
- The conservation easement must prohibit all surface mining. If the easement donor does not own all of the mineral rights, the possibility of surface mining must be determined to be “so remote as to be negligible.”
- The condition of the property must be established by resource data prior to donation of the easement.
- The value of the conservation easement must be established by a qualified appraisal.

Consult with an attorney or tax advisor for guidance. MLR does not provide tax advice.

When a conservation easement meets federal requirements to qualify as a charitable gift, the donor of the easement may be entitled to a reduction in income taxes. In 2015, Congress made enhanced income tax benefits for conservation easement donations permanent.

Contributions of conservation easements are now deductible up to 50% of an easement donor’s adjusted gross income in the year of the donation, and up to 15 years in the future for any unused contribution amounts. For farmers and ranchers who qualify by receiving over half of their annual gross income through agricultural activities, the deduction can be taken up to 100% of their annual adjusted gross income, also with a 15-year carryforward.

### **Estate and gift taxes**

Conservation easements are a significant and useful estate planning tool, both in helping direct uses of property by the next generation and in ensuring that estate tax burdens can be diminished or avoided entirely. Easements ordinarily result in a reduction of property value for estate and gift tax purposes, which can ease the financial burden of passing property on to heirs. Additional estate tax incentives can further reduce the gross estate by up to 40% of the value of land subject to a conservation easement. Estate beneficiaries and executors are also able to place land under conservation easement after the landowner’s death.

## ONCE THE EASEMENT IS IN PLACE

Once a conservation easement is signed, MLR, the landowner, and future landowners begin a working relationship to ensure that the intended conservation becomes a reality. MLR is not in the day-to-day management business. Landowners continue to make all their property management decisions.

The easement limits only the broad parameters of land use, such as subdivision, commercial development, dumping, and surface mining and is tailored to each landowners needs. Annual monitoring visits are conducted by MLR stewardship staff. These visits foster good communication with the

landowner and provide an opportunity to answer questions or respond to concerns. In many ways, the conservation easement is a working partnership for the land. Mutual respect and clear understanding of easement terms help avoid potential conflicts.



*Randy Smith*

## FOR MORE INFORMATION

If you would like more specific information or wish to discuss a conservation easement donation, please contact MLR directly or visit MLR's website.



### **Main Office**

PO Box 355, Helena, MT 59624 • 406-443-7027 • [info@mtlandreliance.org](mailto:info@mtlandreliance.org)

### **Glacier/Flathead Office**

PO Box 460, Bigfork, MT 59911 • 406-837-2178 • [mlrnw@mtlandreliance.org](mailto:mlrnw@mtlandreliance.org)

### **Greater Yellowstone Office**

PO Box 10843, Bozeman, MT 59719 • 406-579-5481 • [mlrgy@mtlandreliance.org](mailto:mlrgy@mtlandreliance.org)

### **Big Sky Office**

PO Box 161554, Big Sky, MT 59716 • 406-594-1570 • [mlrsw@mtlandreliance.org](mailto:mlrsw@mtlandreliance.org)



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