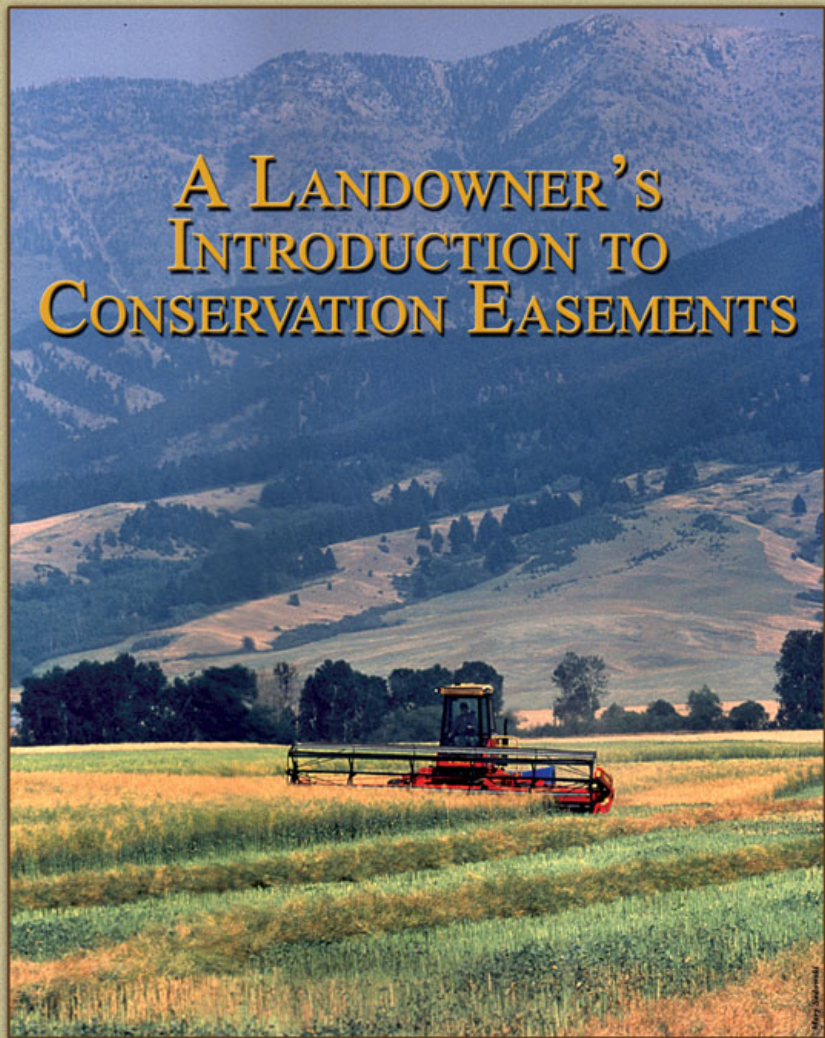


# A LANDOWNER'S INTRODUCTION TO CONSERVATION EASEMENTS



*Gallatin Valley Land Trust is dedicated to the conservation of agricultural land, wildlife habitat, and scenic open space in southwestern Montana.*



**G**allatin Valley Land Trust (GVLТ) is a local, community-based organization dedicated to conserving working farms and ranches, wildlife habitat, and scenic open space in southwest Montana. GVLТ was incorporated as a nonprofit organization in 1990, and today we are supported by a diverse membership from the urban and rural communities of our region. We are funded primarily through contributions from local individuals and businesses. GVLТ has worked with many families to use conservation easements to keep their lands intact and undeveloped for future generations.

## What is a conservation easement?

A conservation easement is a flexible tool, which allows you to permanently protect your land, while retaining title and continuing to use the land as you always have. It is a voluntary legal agreement between you and a qualified organization such as Gallatin Valley Land Trust (GVLТ). Conservation easements permanently prohibit unlimited residential or commercial development, subdivision, and uses or practices which would be harmful to agricultural, wildlife, scenic values, or other important values that the land currently sustains. A conservation easement is recorded with the deed to the property and remains in force regardless of future changes in ownership.

## Why place a conservation easement on your land?

Conservation easements leave a lasting legacy for future generations. Easements conserve the land that sustains Montana's agricultural heritage, abundant wildlife, and unique quality of life. Depending on your unique family circumstances, you may find that a conservation easement fits with both your personal values and your family's financial planning needs. In exchange for conserving your land, which reduces its market value, the federal tax code provides income and estate tax benefits. You may also be able to sell a conservation easement. Throughout our region, many families have found that conservation easements are a great way to help conserve Montana's rich and spectacular landscape.

## What are the steps and costs involved?

Negotiating a conservation easement with GVLТ is the beginning of a long-term cooperative relationship. Open communication, mutual understanding, and respect form the foundation for this relationship.

The process may take a few months to over a year from the initial discussion to recording the easement. The length and complexity of the process can vary greatly depending on factors such as whether the easement is donated or sold.

Your initial discussion with GVLТ will explore whether a conservation easement fits with your goals for your land. Other conservation options may be available. The next step is a site visit, which gives you the opportunity to show your property to GVLТ Staff and to discuss how an easement could be crafted. Following the site visit, some of the major steps in the process include: preliminary and final approval by the GVLТ Board, title work, negotiating the details of the easement document, securing subordination of any mortgage, review by the local planning authority, an appraisal if you wish to pursue tax benefits and/or the sale of development rights, and preparation of a Resource Documentation Report to document the resource values that will be protected by the conservation easement.

The transaction costs for a conservation easement, including the cost of an appraisal, are generally the responsibility of the landowner. Some of these costs are tax deductible. GVLТ can prepare a cost estimate for you following the initial site visit and can help determine whether there are public or private funds available to cover the transaction costs.



## Will I retain land management control and flexibility?

When you negotiate a conservation easement, it is important to ensure that it allows you to keep your land economically viable. Every conservation easement is unique. GVLTL will work with you to design an easement that fits your family situation and your vision for the future of your land.

A conservation easement can cover all or a portion of your property. The easement document will detail specific rights that you reserve to ensure flexibility in your future land use decisions. Reserved rights commonly include rights to control hunting and fishing; to construct or remove fences, irrigation systems, and agricultural buildings; to selectively harvest timber; to choose what crops to grow; and, to operate commercial ventures (such as a guest ranch or outfitting business) that are compatible with the conservation goals of the easement. In some cases, landowners also reserve limited development rights, such as the right to build additional residences for family members. You also retain all rights and responsibilities not specifically prohibited, such as the responsibility to control weeds and the right to choose how to manage them. A conservation easement will not affect your water rights or your right to sell, transfer, or lease the property. You continue to control public access to your land.



Dale Symons



John Leaver

## What happens after the conservation easement is signed?

Once the conservation easement is signed, GVLTL's Land Steward will work with you if you have questions or concerns. To fulfill our responsibility for ensuring that the terms of the easement are met, our Land Steward will schedule an annual visit at your convenience. To date, there have only been a few minor breaches of GVLTL's conservation easements, and all have been resolved through voluntary compliance.

These visits are also an opportunity to build a positive working relationship with our Land Steward, who can assist with land management questions and identifying funding sources to improve fish and wildlife habitat.

If you reserve rights to make major changes to your property, such as timber harvesting or constructing a new residence, you will generally be required to give GVLTL prior notice.

GVLTL has established a Stewardship Fund to cover the long-term costs of upholding our easement donors' conservation intentions. GVLTL requests that you contribute to this fund to help us ensure that future landowners uphold the conservation goals you have specified. In some cases, stewardship fund contributions are provided by public or private sources.



Mary Johnson

*"I'm awfully happy we finally did a conservation easement. I think, how can we be so lucky to be able to keep this place like it is?"*

— Fred Happel, Gallatin Valley farmer



Terry Leaver



Terry Leaver

## How does selling a conservation easement work?

If you want your land to remain intact and undeveloped, but need compensation for limiting your right to develop, you may be able to meet your goals by selling a conservation easement.

Local, state, federal, or private funds may be available to compensate you for the value of the development rights that the conservation easement extinguishes. Although this type of transaction is often referred to as a "purchase of development rights," it is important to understand that the development rights are permanently extinguished and cannot be resold or transferred.

Many landowners choose to negotiate a "bargain sale." They are compensated for a portion of the value of their development rights, and take tax deductions for donating the remainder of the value. The value of your development rights must be determined by a qualified appraiser. A conservation easement sale or bargain sale does not affect the easement's terms and conditions.

GVLT often partners with the Gallatin County Open Space Grant Program, the Natural Resources Conservation Service, Montana Fish, Wildlife and Parks, the Trust for Public Land, and others to successfully fund conservation easement purchases.

## What tax benefits may be available?

Under federal tax law, the value of a donated conservation easement can generally be treated as a charitable contribution. Federal income tax benefits have helped many landowners protect their land with conservation easements. For families faced with having to sell their land to pay high estate taxes, the federal estate tax benefits of conservation easements have often made it possible to pass family lands to future generations.

Because conservation easements permanently limit future development, they generally reduce the fair market value of property. This reduction in value determines the extent of federal income, estate, and gift tax benefits. This amount must be determined by a qualified appraiser.

In Montana, property taxes are based on current land use. A conservation easement will not reduce your community's tax base because it will not affect property taxes on your land.

You may be eligible for **federal tax benefits** if you donate a conservation easement that meets the following federal tax code requirements:

- The easement is given to an eligible organization, such as a land trust.
- The easement protects significant conservation values or benefits including working agricultural lands, wildlife habitat, scenic open space, historic property, or public recreation or education.
- The easement is granted in perpetuity. Mortgage and/or contract holders must agree to subordinate to the easement.
- The conservation values being protected are documented before the easement is signed.
- The easement prohibits surface mining. If you do not own the mineral rights, a qualified geologist may be able to certify that the likelihood of surface mining is negligible.

An eligible conservation easement does **not** have to provide public access, cover the entire property, or preclude all use or development.

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*See your financial advisor to discuss how specific tax benefits may work for you.* Tax benefits vary greatly depending on your particular tax situation, complexities in the tax code, and whether the land is owned by an individual, partnership, corporation, limited liability company, or a trust.



*"Our family loves this land and is deeply committed to making sure that it is conserved for our kids and future generations. The easement that we are placing on our property conserves critical wildlife habitat, protects an important trout spawning ground, and ensures that our family ranch remains a viable agricultural unit."*

— Joe Skinner, Cowan and Skinner Ranch Corporation



Mary Sadowski

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While GVLT can provide a wide range of information about conservation easements, we do not provide legal or financial advice. Always consult with an attorney and a qualified financial advisor early in the process of determining whether a conservation easement is right for your family.