



# MONTANA ASSOCIATION OF LAND TRUSTS

Box 675 Whitehall, Montana 59759  
Glenn Marx, Executive Director 490-1659  
Email: [montanamalt@q.com](mailto:montanamalt@q.com)  
Website: [montanalandtrusts.org](http://montanalandtrusts.org)

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## Land Trusts and Forest Owners

*By Glenn Marx, Executive Director, Montana Association of Land Trusts*

If you are uncertain about what a land trust is and what a land trust does, trust me, you are not alone. Many people either misunderstand or have only vague notions about land trusts, conservation easements and private land conservation. The purpose of this article will be to clear up some of those misunderstandings and provide some basic information about land trusts in general along with an emphasis on conservation easements and forest management.

### Quick History

The first Montana conservation easement was created in 1976 in the Blackfoot Valley. The easement was put in place using Montana's then-new law named the Open-Space and Voluntary Conservation Easement Act along with federal laws and rules that had been in existence for quite some time. The idea of land trusts and conservation is certainly not new to America. Nonprofit land trusts have been around since 1891 and across the US close to 1,700 land trusts are working with landowners to conserve land.

Land trusts exist for one primary purpose: Assist landowners protect open lands for current and future generations. Indeed, one longtime managing director of a Montana land trust summed it up best by saying land trusts "protect dirt." The primary tool land trusts use to accomplish that goal is a conservation easement.

Here in Montana, 12 land trusts have formed the Montana Association of Land Trusts. These 12 land trusts hold about 99 percent of all the nonprofit-held conservation easements in the state. Since 1976, about 1,400 conservation easements have been created and protect about 1.8 million acres of private land. Of that total acreage, the members of the Montana Association of Land Trusts have worked with landowners to protect about 1.2 million acres. State and federal agencies also hold conservation easements. This article will focus on conservation easements held by MALT members.

### Land Trusts

So what is a land trust?

Land trusts are nonprofit organizations committed to protecting open lands, and the definition of open land means working farms, ranches and forests. Land trusts vary in size and mission, but the focus of most land trusts is private land conservation. When land trusts "protect dirt" they also protect wildlife habitat, water quality, historical and educational properties, and they also help keep families on the land.

The 12 members of MALT each work in a defined area or have a defined focus. The Rocky Mountain Elk Foundation, for example, headquartered in Missoula, works with landowners in several states primarily to protect elk habitat. The Montana Land Reliance primarily works with farmers and ranchers on agricultural ground and operates statewide in Montana. Flathead Land Trust is a local land trust that focuses on efforts to protect areas around Flathead Lake, and Flathead River, within the Flathead Valley.

Bitter Root  
Land Trust,  
Hamilton  
406-375-0956

The Clark Fork-  
Pend Oreille  
Conservancy  
Sand Point, ID  
208-263-9471

The  
Conservation  
Fund,  
Missoula  
541-8555

Five Valleys  
Land Trust,  
Missoula  
549-0755

Flathead  
Land Trust,  
Kalispell  
752-8293

Gallatin Valley  
Land Trust,  
Bozeman  
587-8404

Montana Land  
Reliance,  
Helena  
443-7027

The Nature  
Conservancy,  
Helena  
443-0303

Prickly Pear  
Land Trust,  
Helena  
442-0490

Rocky Mountain  
Elk Foundation,  
Missoula  
523-4533

The Trust  
for Public Land,  
Bozeman  
522-7450

Vital Ground  
Foundation,  
Missoula  
549-8650

Most land trusts are community-based with a local board of directors and active community support. For more information about Montana land trusts, go online at [www.montanalandtrusts.org](http://www.montanalandtrusts.org). The site provides a good overview of land trusts plus a link to each MALT member to help you learn more about individual land trust focuses and missions.

This would be a good time to point out what land trusts are not. Land Trusts are not environmental advocacy groups. Land trusts do not litigate against federal land management, do not litigate against multiple-use of public lands and do not litigate against state or local government actions.

It might help to think about it in these terms. The only real “customer” land trusts have is private landowners. A general rule in business is to serve your customer, and make sure your customer is comfortable, confident and satisfied with your service or your product. If land trusts are truly going to work with – and serve – private landowners, land trusts must keep a narrow focus, and that focus is voluntary private land conservation.

### **Conservation Easements**

So what is a conservation easement?

A conservation easement is a permanent binding agreement between a land trust and landowner that, simply put, protects private lands from inappropriate development.

Every conservation easement is different, because every parcel of land and every landowner vision for their property is different. A conservation easement is an agreement voluntarily sought by a landowner because of the landowner’s management objectives for the property. Conservation easements establish the landowner’s commitment for retaining his or her property as open land. In essence, a conservation agreement is a voluntary legal agreement that limits the landowner’s ability to develop the land, and calls for conservation of the property’s natural values.

Property with a conservation easement on it continues to produce crops, cattle, horses, other livestock, hay, timber and other goods. What the property can’t produce, or produce only in a limited and identified amount, is residential and industrial development.

The landowner still owns the land protected by the easement. The landowner continues to farm or ranch or manage the forest, still makes the property operating decisions and still pays taxes on the property. What a conservation easement essentially does is convey residential and industrial development rights to the land trust, and the land trust retires those rights.

A good question is, Why would a landowner seek a conservation easement?

There are three main reasons why 1,400 conservation easements exist in Montana. First, because the landowner has given up something of value (development of the land) and has provided something to the public (protection of open land, conservation of wildlife habitat, possibility of outdoor recreation, protection of scenic views or preservation of educational or historical resources) the landowner may be eligible for a federal income tax deduction. Conservation easements can also reduce a family’s exposure to federal estate taxes, which in return can assist in the feasibility of passing the property to family heirs.

It is important to note that to be eligible for these tax deductions, the conservation easement must be perpetual. That means the conservation easement runs with the title, and is an encumbrance on the land in perpetuity.

Second, some landowners combine a cash payment with a donation of value, so in compensation for the conservation easement the landowner can receive income plus the potential for a federal income tax deduction.

Third, sometimes landowners are simply committed to keeping their property the way their ancestors kept it. The connection between people and their land can be a passionate and strong bond, and a conservation easement respects and protects that bond.

It is also good to understand what a conservation easement does not do. A conservation easement does not involve eminent domain. A conservation easement does not transform private land into a wilderness area. A conservation easement does not reduce Montana property taxes. A conservation easement does not mandate or prevent recreational access to private land. And finally, a conservation easement is not the loss of a property right, but is in fact the exercise of a property right by a landowner.

To learn more about conservation easements you might want to check out a brief brochure published last year by the Montana Environmental Quality Council (EQC), a wing of the Montana State Legislature. The brochure, recommended by 2009 Montana Senate President Bob Story, is available at <http://leg.mt.gov/css/Publications/Environmental/default.asp>

### **Conservation Easements and Forest Management**

Does a conservation easement actually allow a landowner to practice forest management?

The answer is not only does a conservation easement allow for forest management, in some cases the easement even expects, encourages and requires forest management to foster forest stewardship and forest health.

Some people, including some forest owners, view a conservation easement as a type of wilderness or wildlife refuge on private lands. The on-the-ground modern reality is far different. A conservation easement does not lock up the resources on the land. Instead, land trusts understand that resources need to be managed, and almost all conservation easements drafted today recognize and encourage landowners to manage their properties actively to reduce wildfire risks, to improve the health of the forestlands and rangelands, and to manage their resources for the benefit of future generations and society as a whole.

Private landowners and Montana land trusts clearly understand the need for more active management to reduce forest fuels buildup, to create defensible space around structures, to improve forest health and reduce the threat of catastrophic fire.

Keep in mind also that another key element in a conservation easement is the protection and improvement of wildlife and fishery habitat. Many of the same components of a healthy forest – prescribed fire, thinning, selective timber harvests, fuels reduction projects, control of disease and bug infestation, erosion control, and streamside management zones – are also components of effectively improving and managing wildlife and fishery habitat.

### **Conservation Easement Language Promotes Active Forest Management**

The language of conservation easements reflect the land trust and landowner commitment to forest management. Conservation easement language specifically allows the landowner to retain rights for timber harvest.

Here are some examples of “Permitted Uses” under conservation easements lifted directly from conservation easements themselves.

*Permitted Use: To use timber cutting, prescribed burning, and other silvicultural tools for non-commercial purposes, such as for purposes of improving the health and safety of the forest, for purposes of returning the forest resource to a more natural state, and for the prevention of catastrophic wildfire...”*

Here is another example of conservation easement language. *Permitted Use: To use timber harvest, prescribed burning, and other silvicultural tools for the purpose of controlling forest disease, for the purposes of protecting wildlife habitat, for the purpose of fostering a multi-aged forest, or for the purposes of returning the forest resource to a more natural state, any one of which may be performed on a commercial basis subject to the approval of a timber harvest plan...*

These two examples of relatively standard conservation easement language approve both commercial and non-commercial timber harvests to improve forest health. It is important to note that additional standard conservation easement language requires that timber harvests “*must conform to state and federal forestry laws, practices, guidelines or regulations (including Best Management Practices in effect at the time of the harvest); and must minimize soil disturbance, vegetation damage, and impacts on the integrity of the watershed, water quality, wildlife habitat, and the natural scenic and aesthetic qualities of the Property.*”

Clearly, in contemporary conservation easements, there is typically no prohibition against landowners with conservation easements actively managing their forestlands. In fact, the opposite is true. A healthy forest serves the landowner, the land trust, the landscape and the values identified within the conservation easement.

Not only does the written agreement between the landowner and the conservation easement call for active management for forest health, but active steps taken by land trusts and landowners reinforce that language. For example, land trusts routinely refer private landowners with conservation easements to attend the MSU Extension Forestry “Forest Stewardship Workshop” held in association with the Montana Logging Association. Another land trust held a Forest Health Workshop with private landowners and easement holders where fire management expert Steve Arno presented information about forest health.

Land trusts monitor conservation easements on an annual basis. When a land steward for a land trust is monitoring an easement, the land steward will often give the landowner a report about the health of their forest. If the land steward sees insect infestation or disease problems, or the need for fire hazard fuel reduction, the land steward tells the landowner about the problems and often takes the extra step of referring them to forest professionals. The goal of such an effort is to improve forest health and reduce the risk of catastrophic fire. The monitoring by land trusts encourages landowners to be involved and pay attention to their forest resources and manage them in a responsible manner that also meets their goals and objectives for their property.

Finally, specific language allowing the use of prescribed fire and active tree thinning is common in many conservation easements.

### **Specific Examples of Active Forest Management On Conservation Easement Lands**

Length limitations prevent a comprehensive list of specific examples of active forest management but here is a sample of actual on-the-ground projects, programs or events related to conservation easements and active forest management.

- A conservation easement in the Rock Creek area east of Missoula was helicopter-logged through a 650-acre fuels reduction timber harvest. About two million board feet were removed as part of the harvest, which provided logs to Stimson Lumber Company, improved the health of the forest, improved wildlife habitat, and reduced the risk of catastrophic fire.
- A large salvage and timber sale on a conservation easement in the Gallatin Valley area removed close to six million board feet of dead, dying and green timber.
- Within the last few years a forest consultant has worked with landowners and land trusts on active forest management projects in the Ennis area (300,000 board feet), the Blackfoot Valley (300,000 board feet), Lewistown area (900,000 board feet), Livingston area (150,000 board feet), Taylor Fork area south of Bozeman (300,000 board feet), two projects in the Bozeman Pass area (300,000 board feet) and has also worked with land trusts and private landowners on ten different forest management plans and fuels reduction projects.
- A Fuel Treatment Assessment was recently prepared for a landowner who holds an easement in the Georgetown Lake area of Montana, and the report discussed at length the success of fuel mitigation, tree thinning, fuel continuity, wildlife habitat, diversity of tree species, tree regeneration, pile burning and defensible space. In the conclusion, the author of the report (a retired US Forest Service fuels/fire manager and currently a community forester with 39 years of firefighting experience) writes to the landowner: "You have done an excellent job of accomplishing fuel mitigation in one of the toughest habitat types in Montana. You are to be commended for taking on this project. The results will help protect not only your property and improvements but will also help protect your neighbors to the north and northwest of the property. They should value the commitment and investment you have undertaken." On the same Georgetown Lake area easement property, a Department of Natural Resources and Conservation forester wrote, "My overall impression of the stewardship is admirable. It is a pleasure to tour active management carried out in a sustainable fashion, with positive multi-use results."
- A Missoula-based land trust has helped private landowners obtain funding to improve forest health through fuels reduction on their easement properties.
- A Bozeman-area conservation easement, created in 1992, required a forest management plan prior to any forest management operations, and immediately after the easement was created, so was the forest management plan. A professional forester updated the plan in 2001 specifically to initiate a forest health/fuels reduction strategy.
- Finally, in the Blackfoot Valley, a partnership between private landowners, land trusts, agencies and corporations have protected much of the area with conservation easements, and an effort is under way to restore portions of the valley floor with forest thinning operations and prescribed fires on easement properties.

Multiply these kinds of projects and success stories over hundreds of landowners, hundreds of projects and hundreds of thousands of acres, and the massive contribution of landowners, land trusts and conservation easements to forest management, fire suppression efforts, forest health and fuels reduction can begin to be understood.

Gary Ellingson of Northwest Management in Helena, a director of the Forest Stewardship Foundation, works with several land trusts, and in early 2008 wrote a letter to the Montana Legislative Interim Fire Suppression Committee that highlighted some of the benefits of conservation easements.

In part, Gary's letter reads, "We have implemented commercial timber harvests and wildfire hazard reduction projects on numerous ownerships that have conservation easements on their property..." Gary also wrote that, "Our experience is that the various land trusts in Montana are supportive of appropriate forest management including hazard reduction that involves commercial timber harvesting..."

Land trusts and forest owners are committed to the same thing: land stewardship, and land trusts look forward to working with landowners on stewardship projects. Land trusts can also help access grants or program funding from federal agencies to help facilitate forest management actions on private lands.

**Conclusion**

A conservation easement is not for every landowner or every land parcel. But there are landscape and resource reasons for a conservation easement, and there are personal and financial reasons for a conservation easement. Land trusts are positive allies for landowners, and conservation easements are powerful assets.

The membership of the Montana Association of Land Trusts sincerely appreciates the invitation from Dave Woodgerd and the Forest Stewardship Foundation to provide some information about private land conservation to the forest owners of Montana. Land trusts would welcome the opportunity to continue discussing these issues with forest owners, and look forward to future opportunities to work with forest owners to accomplish necessary and important mutual goals: The promotion of and the protection of forest health through active use of sound forest stewardship principles.