

TITLE 76. LAND RESOURCES AND USE

CHAPTER 6. OPEN SPACES

Part 2. Conservation Easements

76-6-201. Conservation easements in general. (1) Where a public body acquires under this chapter an interest in land less than fee, this acquisition shall be by conservation easement.

(2) A conservation easement may be applied to urban or nonurban land.

History: En. Secs. 3, 4, Ch. 337, L. 1969; amd. Secs. 3, 4, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part), 62-604(part).

76-6-202. Duration of conservation easements. Conservation easements may be granted either in perpetuity or for a term of years. If granted for a term of years, that term may not be less than 15 years. An easement granted for a term of years may be renewed for a term of 15 or more years upon the execution of a new granting instrument by the parties.

History: En. Sec. 3, Ch. 337, L. 1969; amd. Sec. 3, Ch. 489, L. 1975; R.C.M. 1947, 62-603(part).

76-6-203. Types of permissible easements. Easements or restrictions under this chapter may prohibit or limit any or all of the following:

(1) structures--construction or placing of buildings, camping trailers, housetrailers, mobile homes, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

(2) landfill--dumping or placing of soil or other substance or material as landfill or dumping or placing of trash, waste, or unsightly or offensive materials;

(3) vegetation--removal or destruction of trees, shrubs, or other vegetation;

(4) loam, gravel, etc.--excavation, dredging, or removal of loam, peat, gravel, soil, rock, or other material substance;

(5) surface use--surface use except for such purposes permitting the land or water area to remain predominantly in its existing condition;

(6) acts detrimental to conservation--activities detrimental to drainage, flood control, water conservation, erosion control, soil conservation, or fish and wildlife habitat and preservation;

(7) subdivision of land--subdivision of land as defined in [76-3-103](#), [76-3-104](#), and [76-3-202](#);

(8) other acts--other acts or uses detrimental to such retention of land or water areas in their existing conditions.

History: En. 62-610 by Sec. 7, Ch. 489, L. 1975; R.C.M. 1947, 62-610; amd. Sec. 16, Ch. 266, L. 1979.

76-6-204. Acquisition of conservation easements by qualified private organizations. Any qualified private organization may acquire by a conservation easement, by purchase, or by gift, devise, bequest, or grant title to any interest or interests in rights in real property, including land and water, that will provide a means for the preservation or provision of permanent significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest.

History: En. 62-611 by Sec. 8, Ch. 489, L. 1975; R.C.M. 1947, 62-611.

76-6-205. Assignability of easements. For the purposes of this chapter, all conservation easements shall be assignable unless the instrument of conveyance or ownership expressly stipulates otherwise. No conservation easement shall be unenforceable on account of the benefit being assignable or being assigned to any other government body or private organization unless such assignment has violated the express terms of the instrument of conveyance or ownership. The assignees must be qualified under the terms of this chapter to hold a conservation easement.

History: En. 62-613 by Sec. 10, Ch. 489, L. 1975; R.C.M. 1947, 62-613.

76-6-206. Review by local planning authority. In order to minimize conflict with local comprehensive planning, all conservation easements shall be subject to review prior to recording by the appropriate local planning authority for the county within which the land lies. It shall be the responsibility of the entity acquiring the conservation easement to present the proposed conveyance of the conservation easement to the appropriate local planning authority. The local planning authority shall have 90 days from receipt of the proposed conveyance within which to review and to comment upon the relationship of the proposed conveyance to comprehensive planning for the area. Such comments will not be binding on the proposed grantor or grantee but shall be merely advisory in nature. The proposed conveyance may be recorded after comments have been received from the local planning authority or the local planning authority has indicated in writing it will have no comments or 90 days have elapsed, whichever occurs first.

History: En. 62-614 by Sec. 11, Ch. 489, L. 1975; R.C.M. 1947, 62-614.

76-6-207. Recording and description of easement. (1) All conservation easements must be recorded in the county where the land lies so as to effect the land's title in the manner of other conveyances of interest in land and must describe the land subject to the conservation easement by adequate legal description or by reference to a recorded plat showing its boundaries.

(2) (a) The county clerk and recorder shall, upon recording, place a copy of the conservation easement in a separate file within the office of the county clerk and recorder.

(b) The county clerk and recorder shall provide a copy of the conservation easement to the department of revenue office in that county within 30 days of the receipt of the original conservation easement.

History: En. 62-615 by Sec. 12, Ch. 489, L. 1975; R.C.M. 1947, 62-615; amd. Sec. 3, Ch. 352, L. 2007.

76-6-208. Taxation of property subject to conservation easement. (1) Assessments made for taxation on property subject to a conservation easement either in perpetuity or for a term of years, where a public body or a qualifying private organization holds the conservation easement, shall be determined on the basis of the restricted purposes for which the property may be used. The minimum assessed value for land subject to an easement conveyed under this chapter may not be less than the actual assessed value of such land in calendar year 1973. Any land subject to such easement may not be classified into a class affording a lesser assessed valuation solely by reason of the creation of the easement. The value of the interest held by a public body or qualifying private organization shall be exempt from property taxation.

(2) Expiration of an easement granted for a term of years shall not result in a reassessment of the land for property tax purposes if the easement is renewed and the granting instrument reflecting the renewed easement is executed and properly filed not later than 15 days after the date of expiration.

History: En. Sec. 8, Ch. 337, L. 1969; amd. Sec. 6, Ch. 489, L. 1975; R.C.M. 1947, 62-608.

76-6-209. Easements to run with the land. The provisions of [70-17-202](#) and [70-17-203](#)(1) and (2) notwithstanding, for the purposes of this chapter, all conservation easements, whether held by public bodies or qualifying private organizations, shall be considered to run with the land, whether or not such fact is stipulated in the instrument of conveyance or ownership.

History: En. 62-612 by Sec. 9, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part).

76-6-210. Enforcement. (1) Conservation easements may be enforced by injunction or proceedings in equity. Representatives of the grantee of the conservation easement shall be entitled to enter the land in a reasonable manner and at reasonable times to assure compliance.

(2) No conservation easement shall be unenforceable on account of lack of privity of estate or contract or lack of benefit to particular land or on account of such conservation easement not being an appurtenant easement or because such easement is an easement in gross.

History: En. 62-612, 62-616 by Secs. 9, 13, Ch. 489, L. 1975; R.C.M. 1947, 62-612(part), 62-616.

76-6-211. Who may enforce easement. (1) The owner of any estate in a dominant tenement or the occupant of such tenement may maintain an action for the enforcement of an easement attached thereto.

(2) Public bodies holding conservation easements shall enforce the provisions of these easements.

History: (1)En. Sec. 1258, Civ. C. 1895; re-en. Sec. 4515, Rev. C. 1907; re-en. Sec. 6757, R.C.M. 1921; Cal. Civ. C. Sec. 809; Field Civ. C. Sec. 253; re-en. Sec. 6757, R.C.M. 1935; Sec. 67-609, R.C.M. 1947; redes. 62-617 by Sec. 15, Ch. 489, L. 1975; Sec. 62-617, R.C.M. 1947; (2)En. Sec. 4, Ch. 337, L. 1969; amd. Sec. 4, Ch. 489, L. 1975; Sec. 62-604, R.C.M. 1947; R.C.M. 1947, 62-604(part), 62-617.

76-6-212. Additional reporting procedures -- coordination of information collection, transfer, and accessibility. (1) A public body or qualified private organization holding a conservation easement before October 1, 2007, shall mail or electronically transfer a copy of that conservation easement to the department of revenue within 6 months of October 1, 2007.

(2) The department of revenue shall review conservation easement agreements collected pursuant to [76-6-207](#) and subsection (1) of this section and record the:

(a) legal description of the conservation easement as it relates to the established property boundaries identified in the conservation easement agreement;

(b) approximate acreage as identified in the conservation easement agreement;

(c) date of the conservation easement agreement;

(d) book and page or document number as provided for in [7-4-2617](#); and

(e) name of the conservation easement grantee.

(3) (a) The department of revenue shall transfer conservation easement information collected pursuant to [76-6-207](#) and subsections (1) and (2) of this section to the department of administration.

(b) The department of revenue shall coordinate with the department of administration to develop procedures regarding the collection and transfer of conservation easement information between the two agencies.

(c) The department of administration shall convert conservation easement information received from the department of revenue to a digital format for land information purposes authorized in Title 90, chapter 1, part 4, that can be accessed through the department of administration's website.

(d) The department of administration shall provide the conservation easement data to the Montana natural heritage program for incorporation into appropriate databases developed or maintained for the purposes of Title 90, chapter 15.

History: En. Sec. 5, Ch. 352, L. 2007.