

Conservation Easement Information Packet

Introductory information about conservation easements for landowners in the Methow Valley.



Methow Conservancy

414 Riverside
Box 71
Winthrop, WA 98862
(509) 996-2870

www.methowconservancy.org

info@methowconservancy.org

What is a conservation easement?

A conservation easement is a voluntary, written legal agreement between a landowner and a qualified conservation organization or government agency that permanently protects specific conservation values.

Examples of conservation values include:

- ◆ wildlife habitat
- ◆ riparian lands and forests
- ◆ scenic views and open space
- ◆ agricultural lands
- ◆ historic property

Why create a conservation easement?

The short answer is: because you want to!

Conservation easements are statements of shared values, which are important to both the landowner and the Methow Conservancy. Every landowner emphasizes different values, just as every property presents unique natural beauty and habitat value. A conservation easement is not designed to hinder the enjoyment or personal use of private property. It is designed to protect, for the long-term, wildlife habitats, open space, sustainable agriculture, meandering rivers, fresh air and brilliant night skies. Although an easement is a legal and somewhat dry document, it is crafted to protect the personal values, which inspire land protection to begin with.

“We did it because we believed it was the right thing to do, for ourselves and for the land that we love.”
-Jane Gilbertsen

How do conservation easements work?

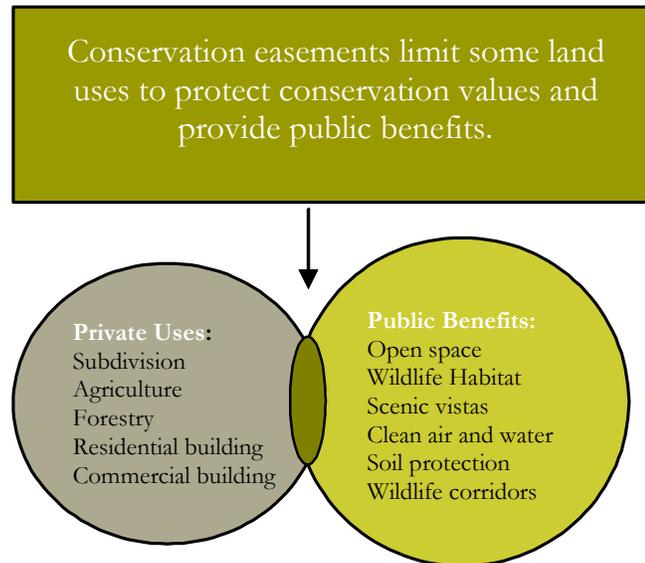
Conservation easements provide a way to make sure that specific management plans and zoning objectives remain in place over the long term. Each conservation easement is permanently attached to the property title as a deed restriction, and each easement has a specific site map, which outlines various zones.

The Methow Conservancy works within current County zoning guidelines, and many of the values protected by our easements are also protected by the existing zoning or the County Shoreline Ordinance. However, in contrast to current zoning, covenants or ordinances, the restrictions in a conservation easement are permanent and are monitored for compliance every year, long after the original landowner moves on.

A conservation easement does not change the property ownership, it does not grant public access and it does not change a landowner’s right to sell or bequeath their land.

What kinds of land does the Methow Conservancy want to protect?

When landowners are interested, the Methow Conservancy looks for ways to protect conservation values that benefit both the landowner and the general public.



The Methow Conservancy accepts easements on a wide variety of private properties, generally within the Methow watershed. We have easements on agricultural land, forest land, riparian land and shrub land, and our easements range from 7-1,400 acres in size. We consider potential easements on an individual basis, and each easement that we accept represents a carefully researched and documented decision by the Board of Directors.

Since the inception of the Methow Conservancy, there has been extensive state and federal interest in protecting riparian areas and salmon habitat, and we have written many of our recent easements to create buffer areas around streams and rivers. We hold other easements which protect working forests, working farms and songbird habitat. The specific conservation values that an easement protects represent the educated choices of both the private landowner and the Methow Conservancy.

“Very little property like this remains in Washington State. We want to preserve it no matter who might own the property in the future, for the fish, and animals and for people who need its wildness to remember their own wild meandering natures.”

- Emily Warn

What does a conservation easement protect?

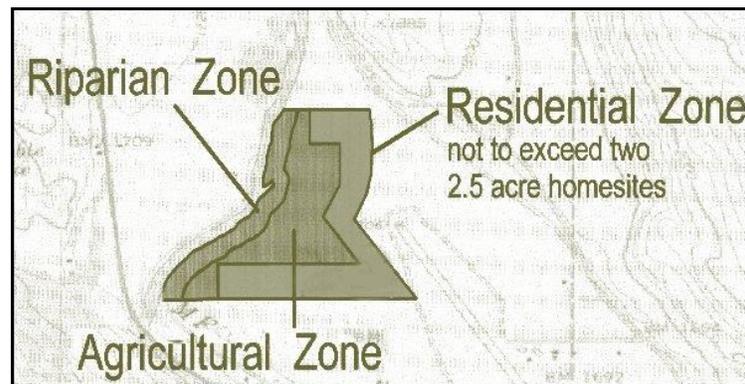
In general, conservation easements protect conservation values from permanent damage and degradation. Because every property is different, and every landowner has different goals, the specific easement restrictions vary with each property.

The Permitted and Prohibited Use sections of each conservation easement outlines specific restrictions that the Methow Conservancy agrees to monitor and defend over time.

Typical uses which may be specifically permitted or restricted include:

- a) Residential use (number and location of homesites)
- b) Subdivision (creation of separate tax parcels)
- c) Agricultural use (usually allowed according to a stewardship plan)
- e) Forestry (usually allowed according to a forest plan)
- f) Recreation
- g) Roads
- h) Fencing
- i) Utilities (usually required to be underground)

Where the future is uncertain, the Methow Conservancy recommends writing a Stewardship Plan, which can change over time with the owner objectives, as long as the basic conservation values are still protected. It is also common to use an “except” clause at the end of some restrictions to allow specific uses. For example: Off-road vehicular traffic is prohibited, except as specified in the forest plan.



Conservation Easements often define specific use areas and protect riparian or agricultural zones.

“We couldn’t bear the thought of that beautiful property being carved up into blocks with houses and roads everywhere.”

-Caryl Campbell

Criteria for conservation easement acceptance

The Methow Conservancy evaluates the conservation value of each potential easement on a case-by-case basis. The recitals section of the easement document justifies the public benefit of protecting specific conservation values, and the Baseline document adds detail to the description of the ecological conditions that the easement protects. Specific grants or projects may lead to additional easement objectives and criteria (i.e. Salmon Recovery Grants will only pay for easements on riverfront properties).

Conditions where the Methow Conservancy may not accept an easement include:

1. Monitoring or enforcement of a conservation easement would be unusually difficult or expensive.
2. The landowner demands provisions in the conservation easement that would significantly diminish the property's conservation values.
3. The property is included in, or adversely affected by a larger development proposal, which would diminish the property's conservation values.
4. The property is unalterably contaminated.
5. The property has an outstanding mortgage of a value higher than the value of the property under easement, there are liens against the property, or the county property taxes are not paid.
6. The property ownership is disputed.
7. The property does not have adequate conservation values.

"I really believe for me it was the right thing to do, and it was something that needed to be done to protect agricultural land."

-Craig Boesel

What is stewardship?

At the Methow Conservancy, we define stewardship as caring for the land. The Methow Conservancy helps community members be good land stewards in many ways, ranging from educational natural history lectures, to special projects, to providing specific information to our conservation easement owners about land management.

In our conservation easement stewardship program, we follow consistent methods for baseline documentation, photo point monitoring and annual reports. We have a careful system to store and back-up the information for each easement, and a Geographic Information System which we use for habitat and land-use mapping.

Who enforces conservation easement restrictions?

The Methow Conservancy Stewardship Director reads the easement and baseline documents, updates photo points each year and monitors whether land uses are consistent with the easement restrictions.

The Stewardship Director reports a suspected easement violation to the Executive Director and Stewardship Committee for review. If a violation has occurred, the Stewardship Director immediately notifies the landowner both by phone and in writing. The Methow Conservancy is committed to resolving conflicts outside of a courtroom setting, and legal recourse is our last resort in enforcement. We greatly prefer to take an education-based approach to defending easement restrictions.

What is the stewardship endowment?

An important part of caring for the land is making sure that there is a cache of information about each property, and a reserve of money to draw from if problems arise. In order to make sure that the Methow Conservancy can monitor and defend easements far into the foreseeable future, we have a Stewardship Endowment. We request that each conservation easement landowner give to the Endowment, and the size of the donation depends on the size and circumstances of the property. A Stewardship donation typically ranges from \$2,000-\$10,000.

When does a conservation easement have monetary value?

Depending on which uses are restricted, some easements may have a monetary value. Of all the conservation values, typically development rights have the most economic value. Payments for easements may come from grant programs through the Methow Conservancy, or as charitable income tax deductions.

The monetary value of a conservation easement must be determined by a licensed appraiser. Appraisers determine the value of an easement by finding the difference between the value before and after the conservation easement.

An example:

Mary owns 40 acres on the Twisp River, which is in 5-acre zoning. The land has no houses. Before the conservation easement, the highest and best use value is \$600,000. If the development options are reduced from 8 houses to 2, an appraiser might say that the easement reduces the value of the property from \$600,000 to \$400,000. In this example the conservation easement would be worth \$200,000.

What are the costs of creating a conservation easement?

Transaction costs for an easement range from \$1,000-\$10,000. These costs include a title report, an appraisal (if a tax deduction is anticipated), a baseline survey, easement drafting, legal review and Methow Conservancy staff time.

Donations from the public pay for Methow Conservancy staff time to work with landowners, while the landowner usually pays other costs. When grant funding is available, the Methow Conservancy may pay part or all of the transaction costs.

The Methow Conservancy board or staff representatives will estimate the transaction costs and payment options for an easement before the landowner and a Board representative sign a non-binding Letter of Intent.

Potential tax implications

It is essential that all easement donors consult with their own professional legal and financial advisors. The Methow Conservancy cannot provide legal or financial advice.

Charitable deduction: The first requirement of a charitable deduction is that the “donative intent” is clearly stated. Donative intent means there is no anticipated benefit for donating an easement beyond the desire to protect the property, and there are no strings attached to the gift. When a transaction qualifies as a charitable donation, the donated portion of the easement value may qualify as a charitable deduction from federal income taxes. Currently this deduction may be taken for up to 50% of the landowner’s Adjusted Gross Income over the course of sixteen years, (100% and no time limitation for farming taxpayers) including the year that the donation is made.

If the easement is a charitable gift (which may qualify for a federal income tax deduction), the IRS requires that:

- ◆ the easement is permanent
- ◆ the easement provides ecological, educational, recreational and/or scenic benefits,
- ◆ the benefits can be documented,
- ◆ surface mining is prohibited,
- ◆ mortgage holders must agree to the conservation easement,
- ◆ a licensed appraiser determines conservation easement value.

Capital gains: Any payment received for the value of an easement is considered a capital gain to the property owner, and is taxed as income in the year the payment is received.

Estate tax: An easement may reduce the appraised estate value, which can help to lower federal estate taxes. Easements can be enacted by will upon death and still lower the overall estate tax burden. Heirs (or estate executors) can also elect to place a conservation easement upon real property of the estate and qualify for an estate tax charitable deduction.

Property tax: Property tax values are determined by the County Assessor’s Office, and are not necessarily affected by a conservation easement.

Income tax: A charitable deduction is permitted for the value of a qualified conservation contribution. The mechanics of this deduction are illustrated below.

An example of a potential federal income tax implication from a \$600,000 easement donation:

Current tax law (made permanent in 2015):

Assume that Mary has an adjusted gross income (AGI) of \$60,000 per year, and she donates a \$600,000 easement to the Methow Conservancy. Given that the easement meets the federal requirements for easements, and that the land is subject to long-term capital gains taxes, Mary may

deduct 50% of her AGI over 16 years (\$30,000 per year). Her total deduction over 16 years would be \$480,000.

If the easement property were farmland, and Mary received over 50% of her income from farming, she would be able to deduct up to 100% of her AGI, with a fifteen year carryforward for her deduction. She would be able to take the entire donative value of the easement in 10 years, and would pay no income tax during that period.

Conservation Easement Process

Typically conservation easements take 6-9 months to complete. Decisions about the future uses of a valuable and sensitive property are difficult, and they require substantial family discussion, legal advice, financial consideration and documentation. The Methow Conservancy makes every effort to be timely and professional, but the coordination required for each easement means that the process moves somewhat slowly.

Conservation easement development usually follows these steps:

- 1) Informal visit between someone from the Methow Conservancy and a landowner.
- 2) Formal meeting between landowner and MC staff where a non-binding letter of intent is signed.
- 3) Landowner and Methow Conservancy draft easement restrictions and draw zones on draft site maps. MC orders title report.
- 4) Appraisal ordered (if needed) to determine value of restrictions.
- 5) Legal advisors of landowner and MC review final easement document.
- 6) MC land committee discusses grant funding (if applicable).
- 7) Funding for stewardship and conservation easement is established.
- 8) MC board and landowners give final approval.
- 9) Baseline survey of property completed.
- 10) Conservation easement signed and recorded with the Okanogan County Clerk.
- 11) Methow Conservancy monitors conservation easement once/year.

Commonly Asked Questions

How will a potential buyer know if there is a conservation easement on a property that is for sale?

Conservation easements are recorded with the County Auditor, and are attached to the property deed. Conservation easements appear with a title search for the property, and most realtors will inform their buyers of a conservation easement even before the title search occurs.

Do conservation easements change property taxes?

Not necessarily. Okanogan County requires a separate application process to change tax designation, and while conservation easements may benefit the public by protecting open space, agriculture or forests, the Okanogan County Assessor's Office decides on all property tax designations.

Do all conservation easements have monetary value?

No. Some conservation easements only consist of a management plan attached to a piece of property. Even when a landowner does not limit development rights there are other limitations that can help protect the land. In all cases, a conservation easement is a useful way to formally document conservation values and establish prohibited and permitted uses (such as guidelines for grazing or forestry).

How does the Methow Conservancy get its funding?

The Methow Conservancy raises the money to staff the office and negotiate easements through membership donations. The Methow Conservancy receives grant funding from government agencies and private foundations for some conservation easement purchases and specific projects.

What happens if the Methow Conservancy disappears?

Each conservation easement has a succession clause that directs which organization will hold the easement if the Methow Conservancy no longer exists. These organizations must be other 501c3 non-profits or government agencies, and some government grants require that the state is the ultimate successor organization.

What are the next steps?

After you've had an informal chat about conservation easements with someone from the Methow Conservancy, the next step is to schedule a formal meeting. At the meeting we will look at maps of your property, and give you a sample conservation easement to read through. We have loads of additional information about conservation easements and stewardship, so please ask as many questions as possible. Your questions and involvement in the process will help us to do the best job possible tailoring your easement to your vision for your land.