

33-271. Definitions

In this article, unless the context otherwise requires:

1. "Conservation easement" means a nonpossessory interest of a holder in real property imposing limitations or affirmative obligations for conservation purposes or to preserve the historical, architectural, archaeological or cultural aspects of real property.
2. "Conservation purposes" means any of the following activities which yield a significant public benefit:
 - (a) Preserving land areas for outdoor recreation by, or the education of, the general public.
 - (b) Protecting a relatively natural habitat of fish, wildlife or plants or similar ecosystem.
 - (c) Preserving open space, including farmland and forest land, if the preservation is either:
 - (i) For the scenic enjoyment of the general public.
 - (ii) Pursuant to a clearly delineated federal, state or local governmental conservation policy.
3. "Holder" means either:
 - (a) A governmental body empowered to hold an interest in real property under the laws of this state or the United States.
 - (b) A charitable corporation or trustee of a charitable trust, the purposes or powers of which include retaining or protecting the natural, scenic or open space values of real property, assuring the availability of real property for agricultural, forest, recreational or open space use, protecting natural resources, maintaining or enhancing air or water quality or preserving the historical, architectural, archaeological or cultural aspects of real property.
4. "Third party right of enforcement" means a right granted in a conservation easement to enforce any of its terms granted to a governmental body, charitable corporation or charitable trust, which, although eligible to be a holder, is not a holder.

33-272. Creation, conveyance, acceptance and duration

A. Except as otherwise provided in this article, a conservation easement may be created, conveyed, recorded, assigned, released, modified, terminated or otherwise altered or affected in the same manner as other easements. For purposes of this article, conservation easements shall be voluntarily created and shall not be required by a political subdivision or governmental entity. This article neither limits nor enlarges the power or purposes of eminent domain, zoning, subdivision regulations or any right of condemnation under the laws of this state. Any assignment, release, modification, termination or other document altering or affecting a conservation easement need only be executed or approved in writing by the current owner of the real property which is burdened by the conservation easement, the holder of the conservation easement and any governmental body, charitable corporation or trustee of a charitable trust having a third party right of enforcement.

B. No right or duty in favor of or against a holder and no right in favor of a governmental body, charitable corporation or trustee of a charitable trust having a third party right of enforcement arises under a conservation easement before its acceptance by the holder and a recordation of the acceptance.

C. Except as provided in section 33-273, subsection B, a conservation easement is unlimited in duration unless the instrument creating it otherwise provides.

D. An interest in real property in existence at the time the conservation easement is created is not impaired by a conservation easement unless the owner of the interest is a party to the conservation easement or consents in writing to the conservation easement by an instrument acknowledged and recorded in the office of the county recorder of the county in which the affected real property is located.

33-273. Judicial actions

A. An action affecting a conservation easement may be brought by:

1. An owner of an interest in the real property burdened by the easement.
2. A holder of the easement.
3. A governmental body, charitable corporation or trustee of a charitable trust having a third party right of enforcement.
4. A person authorized by other law.
5. A governmental body if the holder is no longer in existence and there is no third party right of enforcement.

B. This article does not affect the power of a court to modify or terminate a conservation easement under the principles of law and equity. In determining whether to modify or terminate a conservation easement a court shall consider the public interest to be served.

C. In an action under this section, the owner of the real property burdened by the conservation easement, the holder of the conservation easement and any governmental body, charitable corporation or trustee of a charitable trust having a third party right of enforcement shall be named as parties.

33-274. Validity and assignment of conservation easements

A. A conservation easement, or any assignment, release, modification, termination or other document altering or affecting a conservation easement, is only valid if recorded with the county recorder of the county in which any portion of the real property burdened by the conservation easement is located.

B. Third party rights of enforcement granted through a conservation easement to a governmental body, charitable corporation or trustee of a charitable trust may not be assigned, except with the prior written consent of the holder of the conservation easement.

C. A conservation easement is valid even though:

1. It is not appurtenant to an interest in real property.
2. It can be or has been assigned to another holder.
3. It is not of a character that has been recognized traditionally at common law.
4. It imposes a negative burden.

5. It imposes affirmative obligations on the owner of an interest in the burdened property or on the holder.
6. The benefit does not touch or concern real property.
7. There is no privity of estate or of contract.

33-275. Application of other laws

A conservation easement created under this article:

1. Has the same rights as any other recorded interest in real property.
2. Is subject to all laws of this state pertaining to recording of interests in real property and laws relating to adverse possession.
3. Is subject to the acquisition of real property interests under the laws of this state governing eminent domain, except that the existence of a conservation easement shall not be considered an interest in real property for which compensation or damages may be awarded under the laws pertaining to eminent domain.

33-276. Applicability

- A. This article applies to any interest created after its effective date which complies with this article, whether designated as a conservation easement or as a covenant, equitable servitude, restriction, easement or otherwise.
- B. This article does not invalidate any interest, whether designated as a conservation or preservation easement or as a covenant, equitable servitude, restriction, easement or otherwise, that is enforceable under any other law of this state.