

Conservation Easement



QUESTIONS & ANSWERS

A conservation easement (sometimes called a conservation restriction) is a practical way for private landowners to protect environmentally significant land while retaining their ownership.

Easements provide permanent protection from land use that could damage or destroy its scenic, recreational, ecological, and natural resource values.

Generally, easements are donated to a non-profit conservation organization or public agency, which enforces the restrictions in perpetuity. Each easement is tailored to fit the natural characteristics of the land, the personal needs of the owners, and the objectives of the organization or agency.

LAND OWNERSHIP AND CONSERVATION EASEMENTS

As a landowner, you have certain rights to use and modify the land and natural resources of your property. In the past, some of these rights — such as mining and timber cutting — have been used, taxed, or transferred separately from the land itself. A conservation easement is based on this principle of separating land ownership rights.

A conservation easement is a legal agreement between a landowner (the *grantor*) and a conservation organization or agency (the *grantee*). The agreement separates the rights to exercise more intensive uses — such as construction, subdivision, and mining — from other rights of ownership. These “development rights” are then transferred to the grantee through the conservation easement deed. The grantee agrees to hold but not use the development rights and to ensure that they are not used by anyone else. Conservation easements are granted in perpetuity and apply to the land regardless of who may own it in the future.

Land under easement is still privately owned and managed. Typically, it is used for agriculture, forestry, wildlife habitat, scenic views, watershed protection, recreation, and education. Working together, the landowner and the grantee determine the appropriate land uses, which are then detailed in the easement deed.

WHAT USES ARE PROHIBITED ON CONSERVATION EASEMENT LAND?

Most easements prohibit commercial, industrial, and mining uses of the land. These include: changing the topography, such as dredging and filling in wetlands or along shorelines; disturbing the habitat of rare or endangered species of plants or animals; erecting outdoor advertising structures such as billboards; removing topsoil and other surface or sub-surface materials; and construct-

ing residential, commercial, or industrial buildings. (Some limited development of new homes can be negotiated in certain cases.)

WHAT USES ARE PERMITTED?

Agricultural and forestry activities are permitted and encouraged on most easement-protected land. These include: managing the land to improve wildlife habitat; changing the topography for farming or forestry; and building structures such as culverts, bridges, signs, barns, sheds, fences and dams, when necessary for farming and forestry.

WHO ACCEPTS AND ENFORCES CONSERVATION EASEMENTS?

According to New Hampshire state law (RSA 477:45-47), easements can be accepted and enforced by certain conservation organizations and government agencies. Most often, easements are donated, but they can occasionally be sold for full or partial value. This value is determined through a qualified appraisal.

Private, non-profit groups such as the Society for the Protection of New Hampshire Forests, the Audubon Society, The Nature Conservancy, and local land trusts, are equipped to receive and enforce conservation easements. Public agencies such as town conservation commissions, county conservation districts, the Department of Fish and Game, and the Division of Parks and Recreation also hold easements.

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DOES GRANTING A CONSERVATION EASEMENT GIVE THE PUBLIC THE RIGHT TO ENTER MY PROPERTY?

Not unless you allow it. Most easements let the landowner decide whether or not to allow public access. Sometimes a land-owner gives the public the right to cross the property as part of the easement agreement. This right is usually granted when part of the land traditionally has been used as a public trail or access point to a public pond or lake.

DOES THE EASEMENT RESTRICT MY ABILITY TO SELL, DEVISE, OR GIVE MY LAND IN THE FUTURE?

Land protected by easement can be sold, given, or otherwise transferred at any time. Such transfers will not affect the integrity or enforceability of the easement. This is one of the key benefits to protecting land through a conservation easement.

ARE THERE FINANCIAL BENEFITS TO DONATING A CONSERVATION EASEMENT?

Income taxes: Donation of development rights through an easement constitutes a charitable gift, which may be deductible for federal income tax purposes. The value of the gift, determined through a qualified appraisal, is equal to the difference between the fair market value of the property before and after the easement is donated. To be deductible, an easement must meet certain minimum conservation objectives established by the federal government.

Estate taxes: State and federal inheritance taxes on unrestricted land are often so high that the heirs are forced to sell some or all of the land just to pay these taxes. Because an easement reduces the value of the property and therefore the value of the landowner's

estate, the inheritance taxes are also reduced. Thus, an easement may enable heirs to keep land that they otherwise would have to sell.

Gift taxes: When a landowner gives land to a family member, the gift is subject to federal gift taxes if its value exceeds the maximum tax-free amount.

Lowering the value of the land through an easement may allow the owner to give more land in any one year without creating a gift tax, or it may help reduce the amount of tax owed.

Property taxes: Most property protected under a conservation easement qualifies for reduced taxation under current use or conservation restriction assessment, and landowners are usually encouraged to apply. Landowners whose property is already enrolled in current use will rarely see any further reduction in property taxes as the result of granting a conservation easement.

HOW ARE CONSERVATION EASEMENTS ENFORCED?

The grantee organization or agency must monitor easement-protected land at least once a year to determine that the restrictions have not been violated. Careful monitoring records and photographs are maintained by the grantee.

If the grantee discovers a violation during monitoring, the organization immediately notifies the landowner and takes steps to halt the violation and rectify any damages. Specific procedures for this enforcement are outlined in the easement document. Often, another organization will be given "back-up" or *executory* interest in the easement to prevent violations

if the grantee becomes unable to carry out its responsibilities.

WHO HAS GRANTED EASEMENTS ON THEIR LAND?

Nationwide, concerned landowners have granted easements on more than two million acres of land. In New Hampshire alone, more than 500 landowners have donated or sold easements on their land since 1970. They include farmers, forestland owners, and rural residents who hold their land for recreational or conservation purposes. People who grant easements share a desire to protect and enhance the natural and scenic resources of the state.

SOCIETY FOR THE PROTECTION OF NEW HAMPSHIRE FORESTS

As part of its New Hampshire land protection program, the Society pioneered the use of conservation easements in the early 1970s. Today, the Society holds an interest in more than 370 easements protecting more than 64,000 acres in every corner of the state. Our land protection specialists are trained and experienced in negotiating easements, and have worked with legal experts to develop draft documents to assist you.

For more information, please call or write:



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