

FREQUENTLY ASKED QUESTIONS ABOUT CONSERVATION EASEMENTS



What is a Conservation Easement?

A conservation easement is a legal agreement a property owner makes to restrict the type and amount of development that may take place on his or her property. Each easement's restrictions are tailored to the particular property and the interests of the individual landowner. To understand the easement concept, think of owning land as holding a bundle of rights. A landowner may sell or give away the whole bundle, or just one or two of those rights such as the right to construct buildings or to subdivide the land. To give away some rights while retaining others, a property owner grants a conservation easement to a qualified recipient such as a public agency or a land trust. Typically, an easement does not change the way an owner uses his or her property as long as those uses do not conflict with the terms of the easement. Easements are often written to encourage good forestry and agricultural practices while prohibiting incompatible development or commercial use.

Why grant a conservation easement?

People grant conservation easements to protect their property from development while retaining private ownership. By granting an easement in perpetuity, the landowner can be assured that the resource values of his or her property will be protected indefinitely, no matter who the future owners are. Granting an easement can also yield significant tax benefits. Easement donors should seek legal counsel to determine their potential tax benefits.

What are the potential income tax benefits?

Although the terms of a conservation easement are flexible and can be tailored to suit the interests of the landowner, they must satisfy certain conservation purposes to qualify for a charitable deduction. The Internal Revenue Code Section 170(h) generally defines "conservation purposes" to include the following:

- the preservation of land areas for outdoor recreation and/or education for the general public
- the protection of relatively natural ecosystem habitats
- the preservation of open space (including farmland and forestland) for scenic enjoyment or pursuant to an adopted governmental conservation policy that yields a significant public benefit
- the preservation of historically important land areas and buildings

To determine the value of an easement donation, the owner has the property appraised both at its fair market value with and without the easement restrictions. The difference between these appraised values is the easement value.

What are the potential estate tax benefits?

Additionally, a conservation easement can often reduce estate taxes. Many heirs to large tracts of open space face huge estate taxes because federal estate tax is levied on its fair market value not its current use and they may be forced to sell the property to pay the taxes. To the extent that the restricted value of the property is lower than the unrestricted value, the value of the estate will be less and the estate will be subject to a lower estate tax.

Are there any property tax benefits?

Assuming a property is taxed at current use (in New Hampshire) or tree growth (in Maine) assessment levels, a property owner would pay the same property tax amounts.

What are the grantee's responsibilities?

The recipient of a conservation easement, either a public agency or a conservation organization that qualifies as a public charity under Internal Revenue Code Section 501(c)(3), such as the Upper Saco Valley Land Trust, is responsible for enforcing the restrictions of the easement. Typically, the organization monitors the property once a year to determine if the property remains in the condition prescribed by the easement. If a monitoring visit reveals that the easement has been violated, the grantee has the legal right to require the landowner to correct the violation and restore the property to its original condition. To cover the long-term costs of monitoring a conservation easement, a land trust typically establishes a stewardship fund. A contribution to this fund is requested from an easement donor at the time of the donation.

Must an easement allow public access?

Landowners who grant conservation easements make their own choice about public access. Some owners convey certain public access rights, others do not. If an income tax deduction is claimed, some types of easements require public access. Access is required for easements given for recreation or education. For scenic easements, the property must be visible to the public but access is not required. Access is not generally required for easements that protect wildlife or plant habitats or farmlands.