

# CONSERVATION EASEMENTS AS A TOOL FOR LAND PROTECTION

Information for interested landowners  
from the Quoddy Regional Land Trust

What is a conservation easement? What are the potential benefits to a landowner of “putting my land in easement.” Why is an easement better than a simple deed restriction if I want to limit future use of my land? Why shouldn’t I just “leave it to the kids” to decide what to do with the family land?

These are among the questions most frequently asked by landowners who have an interest in conserving their properties’ scenic, wildlife and open space values but who may not be sure how best to do it. This article provides general answers. For more detailed information, please contact the Quoddy Regional Land Trust at (207) 733-5509, or write QRLT, PO Box 49, Whiting, ME 04691. You can also e-mail [qrllt@maineline.net](mailto:qrllt@maineline.net) or visit the office on U.S. Route One in Whiting, just a mile west of Whiting village. QRLT respects the needs of landowners for complete confidentiality in all discussions concerning their properties.

## Land conservation and fee ownership

Someone who owns land “in fee” may make any use of the land not prohibited by law. Sometimes your use may be affected by a previous owner who has deeded away specific rights, such as mineral rights, or rights-of-way or utility corridors across the property. Within these limits, what you do with your land - and how well you steward it for its conservation values - is up to you. But what happens after you no longer own the land?

Even where no rights have been deeded away in the past, you as the current owner cannot prevent future owners from doing whatever they want with the property unless you take specific actions. Just “leaving the land to the kids” is often a recipe for heartache and conflict, if the next generation doesn’t agree on how to treat the land. Even where they know your wishes, there is no guarantee they will respect them. And if they do, what about the generation after that?

Sometimes landowners try to limit the future uses of their property through deed restrictions. Generally, these can only be enforced by someone with an ownership interest in the property, by abutters, or by some entity like a lot owners association (where deed restrictions are part of a planned subdivision that creates such an association). Often, the parties with legal “standing” to enforce deed restrictions lack the means or interest to do so. Also, courts have generally

sided with future owners who claim that “changed conditions” not foreseen by the original owner (such as the increased development value of the property) invalidate the restrictions.

It is just such shortcomings as these that conservation easements are designed to avoid.

## Conservation easements

Easements are a legally binding transfer of some of the “bundle” of rights that go with land ownership. The easement document becomes a part of the deed of the property, and as property is transferred the easement agreement goes with the land. Conservation easements are designed to protect aspects of the land that are of value to the public, such as important wildlife habitat or natural resources, scenic views from public waters or roadways, or access to the shore.

Only certain kinds of legal entities are able to hold conservation easements. Government bodies and 501(c)(3) charities established for conservation purposes may hold and enforce easements. Conservation land trusts are specifically formed to carry out this mission.

Conservation easements are tailored to the needs of the landowner and the land trust. Designing an easement for a property requires a clear picture of the special qualities of the land in question, the public values to be protected, the financial, emotional and family or business needs of the donor, and the ability of the easement recipient to guarantee long-term stewardship of the property. While a certain amount of the document consists of legal boilerplate required to make it meet state law, most of the agreement is tailored to the specific easement, with frequent consultation and review by both parties during the easement drafting. Since an easement is “forever,” it’s important to take the time to do it right.

Once completed, the conservation easement is signed by both parties and recorded at the registry of deeds. At the same time, the parties certify a package of information known as the baseline data. This may include maps, descriptions of structures, and photographs. It serves as a reference from which all changes can be documented.

The land trust’s regular stewardship and monitoring program gives assurance that any problems that might occur with compliance with the easement, or with third

party infringements, will be dealt with promptly. This is one reason why land trusts may be written in as third-party monitors of easements or purchased land. There are even cases in which one conservation group may own land with a second group holding an easement. Whatever its role, the land trust incurs permanent costs along with its conservation responsibilities. For this reason, QRLT, like most land trusts, asks easement donors to also consider a gift to our Stewardship Endowment Fund so that we can carry out our conservation responsibilities over the long term.

The local nature of many land trusts and their ongoing stewardship programs give easement donors confidence that their wishes will be respected over time. The stability of the easement-holding organization is important, but in the event that a local land trust should cease operations, its assets (including any land or easements which it holds) must go to another organization having similar purposes.

### **Conservation easements: flexible tools for protection**

Easements can be a powerful tool for protecting sensitive wildlife habitats. Often, when the habitat is a large acreage, or linear (as in a river corridor) no one landowner can provide the needed protection. A land trust can work with a number of landowners who have similar goals for contiguous property. It's even possible to write easements for each property and hold them in escrow until the entire protection package has been completed.

Easements do not necessarily provide for public access, although in some cases access may be appropriate. Where granted, public access can be defined and limited, for example daytime use of designated footpaths only. Maine law provides private landowners who allow public use of their properties with very substantial liability protection, unless a fee is charged.

Because conservation easements limit the future development of property, an easement represents value given up by the landowner. The land stays on local property tax roles, but assessments should reflect the reduced value; in any case, a conservation easement qualifies a property for a lowered assessment under Maine's Open Space law. A conservation easement donor can claim the value of the easement (as determined by a certified appraiser) as a charitable gift for federal income tax purposes. Easements also

reduce the value of a person's estate, which may be very important in helping to avoid or reduce estate taxes at the time of death. While the land trust cannot serve as a legal or tax advisor for individuals, it does provide background information that will help landowners explore their options.

### **Examples of easements in the Quoddy Region**

Property A, a 75 acre peninsula, was placed under an easement which permitted the continued residential use of the land in a designated area while prohibiting future subdivision of the land. Over time, adjoining properties have been protected through easement and purchase. The result is a significant block of wildlife habitat in a very important area of Cobscook Bay.

Property B, a homestead that had been in one family for seven generations, was protected with an easement which insured that the traditional access to the shore for fishermen would never be eliminated. The easement also allowed for continued residential and business use of the property.

Property C is a riverfront parcel owned by a sportsmen's club. The Board and membership of the club designed an easement which not only prohibited subdivision, development, or other inappropriate uses, but also guaranteed that public access to the river for passive recreation and for fishing was protected forever.

### **WANT TO KNOW MORE?**

If you would like more information about the process of creating a conservation easement for your property, you can contact the Quoddy Regional Land Trust (QRLT) and discuss your interests with staff. Your discussions with us will be completely confidential.

If you are interested in working with your neighbors on a land protection project, someone from QRLT will be happy to meet with the group and answer questions. While QRLT trustees and staff are not able to give you legal or tax advice, we do have reference material available and would be able to help you in your initial explorations of the estate and tax implications of land protection.

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