

# An introduction to CONSERVATION EASEMENTS

## What is a Conservation Easement?

A conservation easement is a legally binding agreement between a landowner (the Grantor) and an eligible conservation organization or agency (the Grantee) that permanently restricts future development of a property. SELT is a 501(c)(3) non-profit conservation organization and is eligible to hold conservation easements.

Property ownership brings with it inherent rights, including the right of development, which includes construction, subdivision, mining, and water withdrawals. These rights can be separated from the underlying ownership of the property and sold or given away. A conservation easement legally separates some of your rights of ownership and transfers them to a qualified organization, such as SELT. **The receiving organization does not actually hold the development rights as they are in fact extinguished. Rather the easement holder is responsible for enforcing the restrictions both parties have outlined in the easement contract.**

In general, a conservation easement forbids or limits future residential or commercial development. In some cases, a limited number of specified subdivisions may be allowed. Additional restrictions include prohibiting the removal of topsoil, the construction of cell towers and billboards and burying of trash. These restrictions apply to the current and all future landowners.

**It is important to note that each easement is specifically tailored to protect the important values of the land, and to the extent feasible and practicable, the individual desires and goals of the landowner.** For instance, an easement may specifically permit activities like archaeological digs or annual public events like a fishing derby.

Once signed by the landowner and the easement holder, the conservation easement deed is recorded at the county Registry of Deeds as a

permanent public record, thus allowing all future owners and lenders to be aware of the conservation easement on the property.

## Does an easement require public access?

No. Generally, landowners retain the right to determine public access to their property. Some convey specific public access rights, such as access for fishing or hiking along a clearly defined trail. Public access is more often granted when the property has a history of use, is perceived to be a recreational resource, or when required by a funding entity. When a town owns the land, public access is typically granted.

## What land can have a conservation easement?

Properties that have agricultural, recreational, forestry, water resources, wildlife habitat, or scenic or historic qualities may be protected with a conservation easement.

## Who owns land with a conservation easement?

Privately owned land that has been permanently protected with a conservation easement remains in private ownership. Conservation easements can also be used to protect publicly owned lands. Current and future owners of conservation easement land may sell, give, or transfer the property at anytime to a new owner.

*SELT is a non-profit conservation organization whose mission is to protect and sustain significant lands in our communities for clean water, outdoor recreation, fresh food, wildlife, and healthy forests. SELT has helped conserve tens of thousands of acres of land. For more information, call us at 603-778-6088 or visit [www.seltnh.org](http://www.seltnh.org). Our mailing address is PO Box 675, Exeter, NH 03833.*



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### **Who can grant an easement?**

Any owner of property with significant conservation values may grant an easement. All property owners must consent to the granting of an easement. If the property is mortgaged, the owner must either pay-off the mortgage or obtain an agreement from the lender to subordinate its interests to that of the easement holder. This ensures that the easement cannot be extinguished in the event of foreclosure. Many of the conservation easements accepted by SELT are generously donated by landowners. In other instances, SELT will acquire an easement for its full or partial value.

### **How much land may be included in a conservation easement?**

A conservation easement may be used to protect a relatively small parcel with outstanding natural resource features or defensible public benefits. It does not have to cover an entire property. Depending on your goals, a conservation easement may apply to all of your land or only a small part of it.

### **How are conservation easements enforced?**

Once a conservation easement is signed and recorded, the easement holder, such as the SELT, is responsible for regularly monitoring the property for compliance with the terms of the agreement. For an easement held by SELT, a staff member or volunteer will visit the property periodically, usually annually, to determine whether any violations of the easement terms have occurred. The steward takes photographs and extensive notes to document the periodic visits. In the case of violations, SELT is responsible for enforcing the provisions of the easement, which may require, as a last resort, legal action.

After the writing and recording of the conservation easement, the long-term monitoring of the property (known as conservation stewardship) is the most critical component of ensuring your property is permanently conserved as you desired. As most land trusts do, SELT requests (but does not require) that

landowners contribute to our permanent fund for stewardship, known as the *Conservation Stewardship Fund*. This fund covers the long-term costs of monitoring and enforcing conservation easements (see our *Conservation Easement Stewardship* flyer for more information).

### **How long does it take to complete an easement?**

From start to finish, a typical easement takes at least three months and often much longer to complete.

### **Are there financial benefits to placing a conservation easement on your property?**

There may be significant estate, income, or property tax benefits from placing a conservation easement on your property, depending on your financial situation. The granting of a conservation easement does constitute a charitable gift that may be deductible for federal income tax purposes if the property meets conservation standards established by the federal government. Further, a conservation easement may reduce the value of your estate, thereby resulting in a reduction of the estate taxes levied on your heirs. Finally, a conservation easement may also reduce property taxes in cases when a property is not enrolled in Current Use.

SELT can offer basic information about the tax implications of donating a conservation easement. However, we strongly recommend that landowners consult with a tax advisor or attorney on the potential implications of granting a conservation easement. ☞

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