

CONSERVATION EASEMENTS

*An Introduction
for Maine Landowners*





Marina Schaufler

Long Pond



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Stone Barn Farm



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Aldermere Farm



MCHT

Pulpit Harbor



© Bill Stillker, Jr.

Long Island



Chris Hamilton

Niatous Lake

Many of the places that Maine residents and visitors cherish have been protected in perpetuity through use of a legal measure known as a conservation easement. This booklet explains the many advantages that easements offer – to private landowners and to the general public.

INTRODUCTION

*“The earth is common ground and...
gradually the idea is taking form
that the land must be held in safekeeping,
that one generation is to some extent
responsible to the next...”*

- E.B. White, 1942

Recognizing the incalculable worth of our “common ground,” many Maine landowners choose to safeguard the natural values of their properties. One popular means of protecting land is the conservation easement, a voluntary legal agreement made between a property owner and a land trust or government agency that permanently restricts certain land uses and activities. A conservation easement provides a practical and flexible way to hold your land “in safekeeping” for the benefit of future generations.

A conservation easement preserves important qualities of your land that provide public benefit, such as scenic vistas, wildlife habitat and recreational opportunities. Its terms apply

to all future owners so your land will remain protected through the generations. Conveying an easement can make sound financial sense, potentially reducing tax burdens by eliminating unwanted development value. Most importantly, an easement offers a means to secure the fate of a place that you love.

In considering your property's future, you face

Chris Hamilton



Chris Hamilton

Conservation easements can be tailored to protect a diverse range of land values including scenic vistas, significant habitat, sustainable agriculture and forestry, recreational opportunities and historic character.

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an important choice that carries both privilege and responsibility. The continuing beauty and integrity of Maine's "common ground"—our forests, farms, hills, lakes, rivers, bays and islands—depend upon the choices that private landowners make today.

LANDOWNER BENEFITS OF CONSERVATION EASEMENTS

- ✿ Protecting a cherished property in perpetuity.
- ✿ Providing income tax benefits if your charitable easement gift meets Internal Revenue Code standards.
- ✿ Keeping land in the family by reducing your taxable estate so that property can pass to the next generation without being sold to pay inheritance taxes.



Caroline Pryor

PUBLIC BENEFITS OF CONSERVATION EASEMENTS

- ✿ Private conservation lands provide a wealth of communal benefits: open space, scenic vistas, wildlife habitat, watershed protection and in some cases natural resources (such as farm products) or opportunities for public recreation.
- ✿ Land under easement remains in private ownership and on local tax rolls.
- ✿ For communities facing rapid change, easements complement local zoning by helping to ensure appropriate growth and protection of sensitive areas.

A FLEXIBLE TOOL FOR CONSERVATION

Conservation easements are adapted to the particular values of a property. Some easements permit limited future development; some prescribe management of agricultural or timber resources; and others stipulate that a property remain “forever wild.” Easements can allow for public access, but many do not. Stories throughout this flyer provide real-life examples of different easement types and situations, illustrating their flexibility in meeting landowners’ needs.

The structure of a particular easement reflects, not only the land’s conservation values, but personal considerations of the landowners: their estate and income tax planning, family desires and financial needs.



MCHT



Chris Hamilton

An easement can be tailored to address the particular land values of a given property and the needs and circumstances of the landowners.

Easement with Limited Future Construction

Elin Elisofon, a board member of Vinalhaven Land Trust, worked with many landowners on their easements before doing her own. “I gained a whole new respect for the process then,” she says. “It’s hard to plan for the future, and an easement is forever, but ultimately that is what gave me peace of mind.”

She and her sister Jill wanted to retain the historic character and wildlife value of their 78-acre saltwater farm, limiting future development to a designated envelope around the existing farmstead.



Chris Hamilton

Owners of this saltwater farm used a conservation easement to protect extensive wildlife habitat while allowing for limited and carefully sited future development.

Their donated easement conserves the wildlife habitat of the forest, freshwater pond, shore and saltmarsh while providing for preservation of the 1843 farmhouse, expansion of the guesthouse and construction of two modest residences.

“This property has been in our family since 1940 and it means a great deal to us,” Elin says. “People in the community who lived here before us have shared their memories of it with me. I feel a responsibility to ensure that what they cared for in the past will be protected in the future.”

Neither she nor her sister has children so they are uncertain who will own the property after them. The easement helps to reassure Elin that “there will be conservation-minded partners working with the future landowners to safeguard the qualities we cherish.”

PERMANENT PROTECTION WITH CONTINUED PRIVATE OWNERSHIP

An easement's legal restrictions apply to the current owner (or "easement grantor") and to all future owners, whether the property is sold or transferred to heirs. Recognized as an enforceable agreement under both state and federal law, the easement becomes part of the property's title so that all future owners accept the property subject to the easement's restrictions. An easement does not give away title to the property. The private landowner retains all property rights consistent with the easement's conservation purpose—including the right to sell, give, devise, lease, mortgage or otherwise convey title to the land.

A conservation easement, once completed, cannot be changed merely at the wish of the grantor or a subsequent owner. The only likely change to be permitted would be a strengthening of the easement to preserve additional conservation values.



Scenic Easement

For more than 200 years, Kathy Suminsby's family has owned a small meadow bordering Somes Sound in Northeast Harbor. The parcel affords stunning views of the mountains, luring visitors to picnic and paint. Kathy and her late husband Bob generously allowed this public use for decades.

Then skyrocketing property taxes forced them to reassess the property's future. Having "grandfathered" building rights, the land would have commanded top dollar. "I couldn't bear the thought of selling it, though," Kathy says. "Being a Mainer, the water and



Darcie Perkins

An easement on this shorefront parcel helped the landowners keep the property in their family and maintain one of the community's most treasured scenic vistas.

shore are in my blood. This parcel provides a vital connection with the ocean and with my heritage. I wanted others to enjoy it as well, especially now that it's so hard for local people to get near the shore."

The Suminsbys decided that the only way to retain the land and relieve their tax burden was to donate a scenic easement. The easement maintains the sweeping roadside vista by prohibiting any future structures and requiring that the field be mown. The Suminsbys also allowed the public to continue enjoying the field for picnics, painting and photography.

Looking back on their choice, Kathy emphatically affirms the decision to pursue conservation: "It was never a matter of money," she says. "It was a matter of keeping my connection with a piece of my history—the shorefront and the water."

A PARTNERSHIP EFFORT

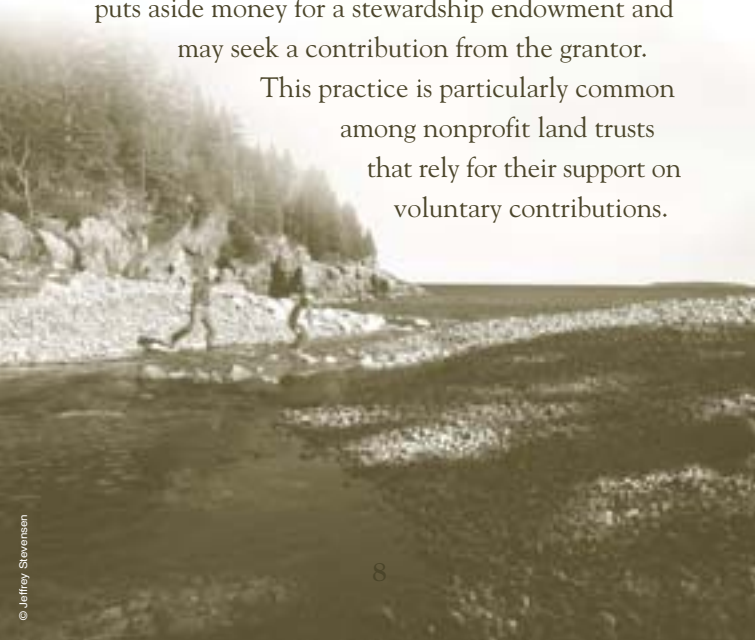
Protecting your land establishes a partnership between you and the easement holder, the land trust or agency responsible for assuring that your mutual conservation goals (as described in the easement) are upheld over time.

The easement holder takes responsibility for long-term easement stewardship. This process usually involves annual monitoring of the land in which the holder may check boundaries, structures and land uses noted in the easement. Following the visit, the easement holder records findings in a monitoring report. The landowner and land trust strive to communicate regularly about any relevant changes on the property.

If easement holders observe a potential violation, they may contact the landowner to discuss the situation and work toward a solution that will maintain the easement's integrity. Only rarely are more formal measures such as legal action needed.

The holder, in accepting an easement, assumes the long-term cost of monitoring and enforcing the easement. To help cover these costs, the holder usually puts aside money for a stewardship endowment and may seek a contribution from the grantor.

This practice is particularly common among nonprofit land trusts that rely for their support on voluntary contributions.



Trail Easement

Portland Trails, a local land trust in Maine's largest urban area, is one of a growing number of community groups using trail easements to enhance walking and biking opportunities for local residents. Trail easements outline the terms by which nonprofit organizations can establish and maintain paths across private land.

"This innovative use of conservation easements has helped expand our trail network," observes Nan Cumming, Executive Director of Portland Trails. She

The gift of a trail easement along the Stroudwater River in Portland helped create a popular community walking path.



Phil Poitier, Portland Trails

cites the success of an easement given in 1997 by the UnumProvident Corporation. That easement covers approximately 40 acres along the Stroudwater River, providing for a rustic pedestrian/bicycle trail and such structures as timber steps, board walks and bog bridges. "Our employees and the whole community benefit greatly from the extensive trail system around Portland," says Linnea Olsen, UnumProvident's Director of Corporate Relations. "The Stroudwater River Trail borders our main campus so it gives employees a chance to walk and run during their lunch hours, which promotes health and productivity."

Trail easements tend to foster close partnerships between the easement grantor and the non-profit holder, Cumming explains. "In addition to giving us a trail easement, UnumProvident has generously provided two grants to help construct and improve the Stroudwater Trail and its employees frequently participate in our volunteer work days."

CONVEYING AN EASEMENT

There are few more enduring legacies than the permanent protection of natural lands. Achieving that protection involves a process of planning and negotiation that can extend for months, even years. Time is needed to reach consensus, especially when multiple landowners are involved.

Those who are considering an easement often consult with their local land trust or Maine Coast Heritage Trust early in the process to learn more about their options and the conservation values of their property. The guidance of an attorney, appraiser and tax advisor, as well as the prospective easement holder, is valuable in drafting the easement. When the final easement document is signed, it is recorded at the local Registry of Deeds.

For more detail on the steps involved in granting an easement, contact Maine Coast Heritage Trust for a copy of Technical Bulletin #108, “The Conservation Easement from Start to Finish: An Overview for Landowners.”



The signing of an easement marks the culmination of the planning and negotiating process.

Farmland Easement

Early in the last century, Darthia Farm was one of twelve farms along the Schoodic Point road in Gouldsboro. Today it is the only one still operating, and one of few organic farms Downeast. Bill Thayer, who with his wife Cynthia owns the 33-acre property bordering West Bay, is troubled to see “farmland disappearing like crazy. We wanted our place to remain pretty much as is,” he says, “although the nature of the farming could change.”



To help sustain this organic farm in the future, its owners gave an easement that encourages continued agricultural use and prevents subdivision.

To realize that vision, the Thayers donated a conservation easement to the local Frenchman Bay Conservancy that prevents subdivision of the land and permits construction of only one additional residence placed within a designated building area. The easement allows for continued agricultural use and strongly encourages organic methods.

“Drafting the easement details was demanding,” Bill Thayer concedes. “The land trust staff proved extremely helpful in that process: anyone considering an easement should certainly draw on their expertise.” That investment of time will pay future dividends, he believes. “We were concerned that our heirs might have to sell the land to divide our estate equitably. Now we can rest assured that the property will remain intact and contribute to the community by providing fresh, organic farm products.”

DONATING AN EASEMENT

The simplest way to convey an easement is by donating it to a qualified conservation organization or a federal or state agency (see list of potential holders on page 19). This gift entitles you to claim an income tax deduction for the fair market value of the easement as determined by a qualified appraiser.



You can also give an easement in your will, reducing inheritance taxes by removing the land's value from your estate. Your heirs may even place an easement on the land they inherit. Provided that the conserved land meets certain tax code provisions, up to 40 percent of its value can be excluded from your estate. If you are considering a gift by will, consult with the proposed easement holder before finalizing your plans to confirm that the holder is prepared to accept such a gift.

Forever Wild Easement

“There are some wild places,” Georgetown landowner Bob Lundstrom believes, “that just shouldn’t be developed.” The one he knows best is his expanse of woodlands and salt marsh bordering Reid State Park. With more than a mile of tidal shorefront, this land was once slated to become a subdivision of large estate homes. Lundstrom moved quickly to buy four of the threatened lots, and sought a means to protect the land permanently. Working with Maine Coast Heritage Trust and the local Lower Kennebec Regional Land Trust (LKRLT), Lundstrom crafted a “forever wild” easement that will maintain the scenic and ecological integrity of his 193 acres.

Lundstrom wanted an easement that would benefit the many species that make their home on the land. “If there ever was a spot with wildlife value,” Lundstrom says, “this is it.” There’s sufficient space to support several moose, and beaver are returning after being trapped out years ago. The easement will maintain this wildlife haven by preventing future subdivision, commercial timber-harvesting or construction (save for minor structures to aid wildlife observation and passive recreation). Lundstrom donated his “forever wild” easement to the LKRLT.



A “forever wild” easement safeguards this exceptional wildlife habitat along the Little River tidal estuary.

“This land really fits the definition of ‘forever wild,’” Lundstrom says, “and the easement will keep it that way.”

SELLING AN EASEMENT

While donating an easement provides welcome tax benefits, some landowners need financial compensation for the reduced market value that results from their easement. Conservation organizations and government agencies have limited funding for the purchase of lands and easements, so they can rarely afford to pay fair market value for an easement. By offering their easement at a “bargain sale” price (below fair market value), landowners receive an economic return and potential tax benefits while making the easement acquisition affordable to the nonprofit organization. In a bargain sale, the landowners eliminate the capital gains tax on the foregone amount and may claim the difference between the fair market value and the bargain sale price as an income tax deduction (determined by a qualified appraisal). Given each landowner’s unique circumstances, the advice of an accountant can prove helpful.

WHEN NOT TO CHOOSE A CONSERVATION EASEMENT

A conservation easement, while a versatile tool, may not be the best choice for all landowners. Some lands lack sufficient conservation significance to merit protection with an easement. Other lands, depending on family circumstances and planned future use, might best be owned and managed by a land trust or agency (*e.g.*, when a property will receive extensive public use or when no family members want to keep the land).

It’s also important to consider the potential financial impacts of placing an easement on your property. While tax benefits may help compensate for the reduced market value of the land, your easement will lower the ultimate market value of your property.

Buying a Property with an Existing Easement

For two years, David Manski and his family looked for a farm property on Mount Desert Island where they could grow vegetables and fruits and raise a few live-stock. He finally resorted to using tax maps to contact specific landowners. That process uncovered a gem, David says, “a beautiful 35-acre mix of pasture and woodland with a conservation easement on it that made the property affordable.”

The property’s former owner had donated an easement to Maine Coast Heritage Trust that encouraged agriculture and sustainable forestry while preventing



Melanie Farrington

An existing conservation easement helped make this island property affordable for the family that wanted to farm it.

other commercial activities or subdivision. “We had never owned easement land,” David explains, “so we didn’t know what to expect regarding our relation with MCHT.” The easement requires the Manskis to notify MCHT before conducting activities such as building that might adversely affect the land’s conservation values. “This communication has not proven to be a burden,” David reflects. “In fact, we look forward to MCHT’s annual visits as it gives us a chance to talk about our recent accomplishments and our plans for the coming year. Being a ‘second generation’ owner of a conservation easement property has enabled us to meet some of our personal life goals and preserve an increasingly rare cultural landscape on Mount Desert Island.”

THE NEXT STEP

To learn more about conservation easements, please contact your local land trust, Maine Coast Heritage Trust or another land conservation organization or agency (see list on page 19). You may want to request from MCHT a copy of *Conservation Options: A Guide for Maine Landowners*. This handbook provides a detailed overview of techniques available for land protection. Some guidance is available on MCHT's website as well, at www.mcht.org.



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“You may own the land, but you don’t really. You’re stewards of it. I really believe you ought to leave it in better shape than you found it.”

Florence Call, who with her husband **Frederick** donated a conservation easement on Bradley Pond Farm in Topsham to the Brunswick-Topsham Land Trust

Inheriting an Easement

Coming from a family of professional naturalists and nature lovers, Scott Grierson was pleased by his father Stanley's decision in 1990 to donate a conservation easement on their 40-acre homestead in Bass Harbor. Having the easement has affirmed and



Melanie Farrington

An easement can strengthen a family tradition of careful land stewardship, as the Griersons of Bass Harbor have learned.

extended Scott's own commitment to conservation: "It helps me to follow through with my Dad's vision and intentions for the land," he explains, "and it minimizes the inevitable pressures to change things – especially as the family expands. Instead of subdividing the land, we've looked at other options and learned to adapt."

That process is easier if the original easement is well-written and far-sighted. "It's important to keep it simple and accomplish the big goals," Scott suggests. "Time and circumstances change with each new generation: an easement can allow for some flexibility without compromising the core vision." Scott hopes that his two young sons will grow up as he did with a strong sense of connection – not just to the land's forests, bog, pond and wildlife – but to their family's conservation tradition. "I hope that they'll share my pride in being a steward of this place," he says, "and the pride I have in their grandfather for taking the assertive step of protecting our land."

MAINE COAST HERITAGE TRUST

Maine Coast Heritage Trust works to conserve coastal and other lands that define Maine's distinct landscape, protect its environment, sustain its outdoor traditions and promote the well-being of its people. Since 1970, the Trust has conserved more than 111,000 acres, including valuable wildlife habitat, farm and forest land, and several hundred entire islands.

MCHT provides conservation services to landowners, local land trusts, government agencies and communities throughout Maine. As a membership organization, MCHT is supported by individuals committed to protecting the natural character of Maine. The Trust invites your support and involvement.

Main Office:

One Main Street, Suite 201
Topsham, ME 04086
207-729-7366

Somesville Office:

P.O. Box 669
Mount Desert, ME 04660
207-244-5100

Aldermere Farm:

70 Russell Avenue
Rockport, ME 04856
207-236-2739

www.mcht.org

For a current listing and map of Maine's local land trusts, please visit the Maine Land Trust Network website at www.mltn.org or contact MCHT's main office.

Potential Easement Holders within Maine

ACADIA NATIONAL PARK
(www.nps.gov/acad)

FOREST SOCIETY OF MAINE

LOCAL LAND TRUSTS
(see www.mltn.org for a complete listing)

MAINE AUDUBON
(www.maineaudubon.org)

MAINE COAST HERITAGE TRUST (MCHT)
(www.mcht.org)

MAINE DEPARTMENT OF CONSERVATION/
BUREAU OF PARKS AND LANDS
(www.state.me.us/doc)

MAINE DEPARTMENT OF INLAND FISHERIES
& WILDLIFE
(www.state.me.us/ifw)

MAINE FARMLAND TRUST

THE NATURE CONSERVANCY
(www.nature.org)

NEW ENGLAND FORESTRY FOUNDATION
(www.neforestry.org)

SMALL WOODLOT OWNERS
ASSOCIATION OF MAINE
(www.swoam.com)

U.S. FISH & WILDLIFE SERVICE
(www.fws.gov)

NOTES





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“An easement is an acknowledgement of personal mortality. As long as I and my siblings are here to protect these islands, they are as safe as we can make them. To admit that I won’t be here to protect them someday is to admit that I won’t be here to draw pleasure and sustenance from them. And what can heaven offer equal to this?”

But chance and fate being what they are, that day may come at any moment. And so there is some urgency in this matter of easements. If I am to protect these islands beyond my life, I have no choice but to vest the stewardship of them in hands that will work on after mine are still. To have some control in the future, I have to give up some control in the present.”

Tom Godfrey, who with his siblings donated an easement on four islands in Seal Bay to the Vinalhaven Land Trust

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