

## CONSERVATION EASEMENTS - A TOOL FOR PERMANENT LAND PROTECTION

I have been asked to share some basic information about conservation easements- a tool designed to allow individual landowners to permanently protect their property from ever getting developed. Estimates indicate that annually approximately 15,000 acres of New Hampshire's rural landscape is being permanently developed. Since approximately two thirds of N.H.'s 5.7 million acres is privately owned, it is these private landowners that hold the key to the future appearance of N.H. landscape. N.H., for the fourth decade in a row, is the fastest growing state in the Northeast. With people pressure increasing and skyrocketing land prices providing the temptation to subdivide, this growth is sure to increase. Many landowners are seeing the benefits of permanently protecting their land. For the purposes of estate planning, keeping land in the family and providing the obvious public benefits of open space, many are turning to a number of options. Conservation Easements are one tool in the land protection tool box and they have protected tens of thousands of acres across the state.

### What is a Conservation Easement?

A conservation easement is a voluntary legally binding agreement between a landowner called the Grantor and a conservation organization or agency called the Grantee that separates the rights associated with the land such as construction, subdivision, mining from the other rights of ownership. These rights known as "Development Rights" are transferred to the grantee through the conservation easement deed. The grantee agrees to hold but not use the developments 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. Typical uses of easement land include agriculture as will be the case of the Wonalancet Farm, forestry, wildlife habitat, scenic vistas, watershed protection, recreation and educational purposes. Working together, the landowner and the conservation organization determine the desired and appropriate uses of the property and then craft the language of the conservation easement to spell out in great detail what specific uses are to be permitted.

### What Uses are Prohibited?

Most conservation easements prohibit the construction of residential, commercial or industrial buildings. They prohibit the removal of topsoil and other surface or subsurface materials. Erection of advertising structures such as billboards, filling in wetlands, disturbing the habitat of rare or endangered species of plants and animals are also prohibited.

### What Uses are Permitted?

Agricultural and forestry activities are generally permitted and encouraged on most easement protected land. These activities include managing the land for forest products, for improving wildlife habitat, construction of access roads for farming and forestry, building structures such as culverts, bridges, barns sheds and fences when necessary for farming and forestry. In some instances, a landowner may wish to ensure that the land stay in a forever wild or "Wilderness" status thus preventing the activities previously mentioned. It is important to emphasize that the specific desires of the landowner are critical in crafting the language of the easement to ensure the wishes of the owner are carried out and enforced by the Grantee.

### Can the Public Enter My Land?

Most easements allow the landowner to decide whether or not to allow public access. There is no general requirement that the land must be open to the public. Landowners often grant the public the right to cross the property when the land has been traditionally used as a public trail or access point to a public pond or lake.

### Financial Sacrifice and Compensation

A landowner who places a conservation easement on their land is making a substantial financial sacrifice for they are foregoing the income that could be generated from developing the property into the highest potential use as allowed by local ordinances. Landowners have a number of options in which to be compensated for the placement of an easement on their ownership.

The first is to sell the development rights to a conservation organization. In this way the landowner is reimbursed for giving up the rights to develop the land. A detailed appraisal prepared by a licensed real estate appraiser must be prepared for the property. In order to arrive at this figure, the appraiser first determines the value of the highest and most intensive developed use of the property. The land is then appraised with the conservation easement on the land. The difference in the two values is the value of the development rights and this is generally the figure which an interested organization would pay the Grantor. An appraisal is a costly proposition and ranges in the \$3000-\$5000 plus figure.

Some landowners wish to gift the value of the easement to a conservation organization and then claim a tax deduction on their income tax. The rules have changed. Formerly, you could deduct up to 35% of your adjusted gross income and take up to five years in which to use up the appraised value of the gift. This approach generally saved you about .25-.30 cents of taxes for every dollars worth of donation. Currently, An accurate appraisal capable of withstanding a stringent IRS audit is essential if you wish to take a tax deduction on your income tax using this approach.

Other landowners are content to gift the value of the easement to an organization and not take a tax deduction. In that case, an appraisal is not necessary.

### What Other Expenses are Incurred by the Landowner?

An essential element of every easement is an acceptable property survey of the land in question. This is critical because the property must be described in the Conservation Easement with specific metes and bounds so that the exact boundaries of the property can be identified. This is absolutely critical for the Grantee. In their obligatory annual inspection of the property to determine if the easement restrictions are being adhered to by the current owner, the boundaries of the easement area must be readily identifiable. Blazed and painted boundary lines are really essential to simplify the inspection process. Estimated costs for a survey vary dramatically with each property. They can cost thousands of dollars depending upon the complexity of the project. The other major expense of a conservation easement is the establishment of an easement monitoring fund. Grantees require such a fund since when they accept the easement, they are guaranteeing that in perpetuity, the organization will conduct an annual inspection of the property to ensure the terms of the easement are being met by the current landowner. In the case where a violation of these terms is identified, the Grantee must be prepared to take whatever action is necessary to require the current owner to rectify the violation. In extreme cases, this could involve costly litigation. Thus a fund established at the signing of the easement guarantees funds to cover the Grantees expenses.

### Philosophy Associated with Easements

Philosophically, some are opposed to the concept of an easement since it smacks of "Ruling From the Grave" so to speak. Some argue that we should have enough confidence in future generations to make the essential wise land use decisions based upon their need at that point in

time. As temporary caretakers of a parcel of land the opponents believe one should not have the ability to permanently determine its use forever. I counter that argument with the example of an individual who purchases a parcel of undeveloped acreage and proceeds to irreversibly develop the property into a commercial development. This action has the same level of permanency as one who chooses to permanently prohibit development of a parcel. In the former example, society often views the developer as a successful entrepreneur and often envies the financial success of the individual. Likewise, the person who elects to protect land with an easement, needs to be recognized for the contribution they are making to preserve our rural landscape. The financial sacrifice that is inherent in this action needs to be recognized as well.

Virtually everything we do in our life has a lifespan. If we paint our house and do a thorough job of preparation, we still only get about 5-10 years before the job has to be repeated. Even the major commitment of parenting children who hopefully will live a long and fruitful life has a generational lifespan. In thinking about the responsibilities that go with landownership and the concept of stewardship of the land as opposed to exploitation, I realized that the placement of a conservation easement on my ownership would essentially be the most permanent action I could ever take in my life. Most of us want to have a sense that we mattered. The permanency of an easement can help to fulfill that desire. For those of us blessed with owning property in such gorgeous surroundings literally hold the future of this region in our hand. If we want this area to be able to grow but still retain the qualities that each and everyone of us cherish, then we must give serious thought to how we individually can provide for our families while at the same time preserve that which we are privileged to enjoy. I can't think of a nicer legacy than to help guarantee a New Hampshire that has accommodated growth with the protection of its rural character. THINK ABOUT IT!!!!!!!!!!!!!!!!!!!!