



## Frequently Asked Questions: Donated Agricultural Conservation Easements

### **1. What does it mean to “donate” an Agricultural Conservation Easement?**

When a landowner grants an agricultural conservation easement (which we usually refer to as an “agricultural easement” or simply an “easement”), the landowner permanently gives up some of the rights of ownership (which is usually the right to conduct non-agricultural development on the portion of the land protected by the easement). This action is considered a charitable “donation,” since the landowner is not being compensated for giving up these rights. (However, unlike a monetary gift to a charitable organization, the donation of an easement does not increase the organization’s assets. In fact, the donation of an easement is considered a liability to the organization, because the organization is obligated to monitor and enforce the easement in perpetuity.)

### **2. What does it mean that a land trust is the “holder” of an easement?**

A landowner who grants an easement is giving up certain ownership rights associated with developing the properties in favor of protecting the land’s productive agricultural potential, and in some cases, its recreational, ecological, and habitat value. All of these values taken together are referred to as the land’s “Conservation Values.” An easement requires a legal entity (often a land trust, though it could be another non-profit or a government entity) to “hold” these conservation values by enforcing the terms of the easement.

### **3. If I donate an agricultural easement, will I still maintain full ownership of the entire property?**

Yes. A landowner choosing to donate an agricultural easement on property is NOT giving up title to the land, nor any remaining rights of ownership. An agricultural easement is a deed restriction, NOT an instrument that transfers all rights of ownership from a landowner to a land trust. The landowner will continue to maintain full ownership of the property, subject to the terms of the agricultural easement.

### **4. Can I still sell, lease, or will my property to someone else if it has an agricultural easement on it?**

Yes. When a landowner donates an agricultural easement on property, the landowner reserves all customary rights and privileges of ownership, including the rights to sell or lease the property, or to “devise” it (that is, to leave the property to someone else through a will). An easement is a permanent restriction that is attached to the property’s deed, and the easement’s terms will apply to all subsequent landowners into perpetuity. We say that the agricultural easement “runs with the land,” and its permanency makes it a powerful conservation tool. When protected lands are sold, MFT works to establish positive relationships with the new owners to ensure continued compliance with the easement.

### **5. If I have an agricultural easement on my property, will I have to allow public access to my land?**

No. Unless the existing deed specifies that public access to a property must be allowed, a landowner who decides to donate an agricultural easement on a property is under no obligation to provide public access to the land. At the time of the easement drafting, the landowner may choose to include language to permanently allow public access to their property, for hunting, fishing, or recreation; but MFT does not require a landowner donating an easement

to do so. (Of course, the easement will grant MFT the right to reasonably enter upon the property for the purpose of monitoring compliance.)

## **6. What types of conditions/restrictions can be included in an agricultural easement?**

Every agricultural easement is unique, and MFT strives to craft an easement document that meets both landowner interests and our mission to protect farmland. Generally, an agricultural easement limits future development that would in any way interfere with continued farming, but allows future development that supports farming. Easements typically allow fencing, land-clearing, and new agricultural structures (such as barns or even farm-worker housing). Beyond this, some easements allow a landowner to build an additional house (as may be needed so the next generation can live on property) or even allow a landowner to sell a house lot in the future, if that possibility is thought through upfront. This kind of flexibility can often be accommodated in the easement.

## **7. How does placing an agricultural easement on my land affect my property taxes?**

The impact on taxes will depend on several factors. In some instances, property taxes may go down. In other instances, taxes may stay the same.

One of the factors affecting taxes is how the property is currently assessed. In theory, every property in Maine is assessed at its fair market value. (For a farm property that is not yet protected with an easement, market value is often what a developer would pay for it.) Thus, in any case where the easement lowers the farm's market value, the easement should, in theory, lower the farm's assessment and hence lower property taxes. But in many communities, farm properties that are not protected with an easement are not assessed at their value as land that could be developed, but as something less. In those instances, the placing of an easement on the land may have no or little impact on taxes, at least initially.

A second factor affecting taxes is whether the property is enrolled in one of Maine's "current use" tax programs. (There are three such programs that are applicable in varying degrees to most Maine farms: tree growth; farmland; and open space). If a farm property that is not yet protected with an easement is enrolled in one of these current use tax programs, the farm is not currently paying taxes based on the market value of the property. In such instances, the placing of an easement on the land may have no or little impact on taxes. The impact of current use taxation varies due to several factors, even including county location (for tree growth), so landowners need to do some site-specific research to fully understand the potential impact on them; but generally speaking, MFT has noticed that the taxes levied on many farm properties that are protected with an easement is very close to what the taxes would be on the same farm if it wasn't protected by an easement but it was enrolled in a current use tax program.

## **8. What could happen to make me regret donating an easement?**

It's critically important for every landowner thinking of donating an easement to fully realize that the easement will place new restrictions on the land. A landowner may regret donating an easement if the new restrictions prevent some intended use. The key is to make sure the easement is crafted to respond fully to a landowner's intentions. As noted elsewhere, easements can be crafted with a great deal of flexibility. If there may be future need to divide the farm in two, that can be placed in the easement. If there may be a future need to create a new house lot, that can be addressed. But any future development or land division not written into the easement as being allowed will not be permitted.

Another consideration is financial. An easement can reduce the land's market value. So when a landowner sells the property, it may sell for less than what it would sell for with an easement on it. However, donating an

easement can also bring financial benefits, including the tax benefits that come with a charitable contribution (that in some cases is sizable) and the possibility (depending on circumstances) to lower capital taxes, inheritance taxes, and/or property taxes.

### **9. What will my relationship with MFT be like after the easement has been recorded?**

If MFT is the holder of the easement, the landowner and MFT will be involved in an on-going relationship after the easement has been recorded. As the holder, MFT is legally responsible for ensuring that the conservation values of a property will be protected and that the terms of the easement are upheld. To that end, MFT visits every property on which we hold an easement annually, to monitor and record any changes that have taken place in the landscape in the previous year. The terms of an easement will specify which activities (if any) require a landowner to inform MFT if and when they are undertaken. The easement will also specify which activities (if any) require the landowner to seek permission from MFT in order to proceed. In short, landowners and MFT will communicate regularly and meet face-to-face each year, as part of a special partnership designed to steward the land.

### **10. What are the out-of-pocket costs I could expect to incur when donating an easement?**

There are many costs associated with donating an easement. Some of these costs will likely be paid by the participating land trust, although the degree to which this occurs will depend on the land trust's policy and financial capacity. The remaining costs usually fall to the landowner. In some cases, the landowner and/or the participating land trust may seek outside grants or donations from third parties to help cover costs.

Typical costs include:

- The services of a lawyer to advise and represent the landowner, as needed.
- The services of an accountant to advise the landowner on any tax benefits and consequences.
- An appraisal, if the landowner wishes to claim the value of the easement as a charitable donation.
- A "stewardship donation." NOTE: As a general practice, land trusts try to obtain stewardship funds at the time of the easement donation. Such funds are held by the land trust (often as an endowment) to help cover the annual costs of monitoring and insurance. Generally, MFT aims to secure at least \$10,000 in stewardship funds for each easement, and more at times, if there are special stewardship considerations.

In the case of MFT, we always cover the following expenses, at no cost to a landowner:

- All MFT staff time associated with the project, including services provided by MFT's legal counsel drafting the easement document.
- Costs associated with title work.
- Closing and recording costs.
- Costs associated with preparation of baseline documentation report (i.e., a graphic record of the property at the time the easement is granted).

In addition, MFT will at times cover some or all of the "stewardship donation."

## **11. What questions should I be considering before I contact MFT about my conservation intentions?**

It is useful for landowners to give thoughtful consideration to many details before contacting MFT, in order to sufficiently address their specific needs and desires, as well as the potential needs of subsequent owners of the land.

The following list of questions helps MFT gain an understanding of what a landowner's "conservation objectives" might be in order to provide the best possible service:

- What is your vision for how this land will be used in 5 years? 10 years? 20 years?
- Are there any activities (in addition to agricultural use) that you would like an easement to permanently allow?
- Are there any activities (in addition to future non-agricultural development) that you would like an easement to permanently prohibit?
- Do you want to make any provisions that would allow some portion of the land to be sold for a house lot in the future? Do you want a subsequent landowner to be able to do so?
- Why do you wish to permanently protect your land?

## **12. How do I get started on a donated easement project?**

Contact Maine Farmland Trust and ask to speak with a member of the Lands Staff.

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