



Frequently Asked Questions: Agricultural Conservation Easements

1. If I grant or donate an agricultural easement, will I still maintain ownership of the property?

Yes. If you grant an agricultural easement on your property, you are 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 you to a land trust or other entity.

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

If you grant an easement, you are giving up certain ownership rights (associated with developing the property) in favor of protecting the land’s productive agricultural potential, and in some cases, its scenic, recreational, and ecological value. All of these values taken together are referred to as the land’s “Conservation Values.” Under law, an easement requires a separate entity (often a land trust, though it could be another non-profit or a government entity) to “hold” these conservation values and to enforce the terms of the easement. The entity is often referred to as the “holder.”

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

Yes. When you grant an agricultural easement on your property, you reserve all customary rights and privileges of ownership, including the rights to sell or lease the property, or to leave the property to someone else through a will. The same holds for future owners. (The easement’s terms transfer with ownership, and will apply to all subsequent landowners in perpetuity.)

4. What types of conditions/restrictions can be included in an agricultural easement?

Generally, an agricultural easement limits future development that interferes with continued farming, but allows future development that supports farming, including fencing, land clearing, and new agricultural structures (such as barns or even farmworker housing).

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

No. You are under no obligation to provide public access to farmland you protect. Some landowners who grant easements choose to include language that permanently allows public access (for hunting, fishing, or recreation), but MFT’s agricultural easements never require it.

6. What could happen to make me regret granting an easement?

The vast majority of landowners who grant easements remain pleased they did so for the rest of their lives. But because an easement will place new restrictions on your land, permanently, it’s critically important that you think this all through carefully and clearly. We recommend landowners have legal counsel as they work through the easement process. You may regret granting an easement if the restrictions prevent some intended use, or some use that you did not anticipate at the time you granted the easement.

7. What is the effect of an agricultural easement on my property taxes?

Granting an easement on your property may or may not affect your property taxes, depending on a number of factors. Under Maine law, property tax assessments should be based on the market

value of the property, except when the property is enrolled in one of three “current use taxation” programs: Tree Growth, Farmland, and Open Space. If your property was previously enrolled in one of these programs, there may be little change in your tax assessment after an easement is placed on your property; however, some towns give a larger tax reduction on permanently protected land than they do on land enrolled in a current use taxation program. Alternatively, if your property was not previously enrolled in a current use taxation program, you will likely see decreased property taxes after an easement is placed on your property.

8. Would sale of my farm have any effect on the easement?

If your farm is sold, the new owners take it subject to the restrictions in the easement. MFT (or whatever other group may be holding the easement) will establish a working relationship with the new owners to ensure continued compliance with the terms of the easement.

9. Could a government entity take my farm by eminent domain after an easement is in place?

An easement does not prevent the taking of property through eminent domain, yet an easement does create and support an argument against taking the land for other uses. If protected farmland is taken by eminent domain, the compensation paid by the government entity is split proportionately between the landowner and the holder land trust.

10. Who would likely hold an easement on my property, MFT or another land trust?

MFT is a statewide organization that holds some easements, but prefers that local and regional land trusts hold easements where appropriate and acceptable to all parties. MFT is always willing to work with local and regional land trusts.

11. What if the land trust holding the easement on my farm becomes inactive or dissolves?

Every easement contains language specifying that the easement can be transferred to another entity that meets certain requirements set by statute and IRS regulation. Holder land trusts have an obligation to monitor and enforce their easements. If they are unable to do so they must transfer the easement to an entity that is capable and willing. This could be another land trust, a municipality, or the State of Maine.

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

If MFT is the holder of the easement, you and MFT will be involved in an ongoing relationship after the easement has been recorded. As the holder, MFT is legally responsible for ensuring that the conservation values of the property will be protected and that the terms of the easement are upheld. To that end, a member of staff will visit you annually to monitor and record any changes that have taken place in the landscape in the previous year. In short, you and MFT will communicate regularly and meet face-to-face each year, as part of a special partnership designed to steward the land.

13. What information should I acquire before committing to an easement?

In addition to being fully advised as to the legal effects of an easement, you should discuss the easement with your family or anyone else who might have a future interest in the property. Knowing how such persons think about the value and potential of your property may help you decide whether or not to proceed.

You can contact us at any time for more information, with your questions or concerns, or to start a conversation about protecting your farmland.

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