



NATURE TRUST
of NEW BRUNSWICK

Fondation pour la
PROTECTION DES
SITES NATURELS
du NOUVEAU-BRUNSWICK

CONSERVATION EASEMENTS

Questions and Answers for
New Brunswick Landowners



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THE NATURE TRUST OF NEW BRUNSWICK, INC.
LA FONDATION POUR LA PROTECTION DES SITES
NATURELS DU NOUVEAU-BRUNSWICK, INC.

649 Queen St, 2nd floor
P.O. Box 603, Stn. A
Fredericton, NB E3B 5A6
Phone: (506) 457-2398
Fax: (506) 450-2137

E-mail: naturetrust@ntnb.org
Website: www.naturetrust.nb.ca

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WHAT'S A CONSERVATION EASEMENT AND HOW CAN I USE ONE?

Landowners acquire and own land for many reasons. Some of us have inherited **family land**; the legacy of earlier generations. Some have bought woodlots, recreational property, or land in the countryside we've always dreamed of owning. Often these properties have **special places**: features that may be damaged or threatened and become less special if steps are not taken to **protect them**. Fortunately, New Brunswick landowners can use a “**conservation easement**” to protect these special places.



**SOME QUESTIONS
AND ANSWERS FOR
NEW BRUNSWICK
LANDOWNERS**



What's a Conservation Easement?

A conservation easement is a voluntary legal agreement between a landowner and a qualified organization, usually a conservation organization like the Nature Trust of New Brunswick, to protect land. In legal terms, a conservation easement “runs with the deed” to the property, remaining in force if the land is sold or transferred to a new owner.



Okay, so what does a conservation easement do?

Conservation easements are intended to help landowners like you to protect important features of their land, forever.

What important features will be protected?

In New Brunswick, conservation easements can be used to protect a range of features, including:

- ecologically sensitive areas;
- old forest;
- wetlands;
- intact coastline or islands;
- important wildlife habitat;
- areas with unique biodiversity;
- places that are important for cultural, archeological, or even scenic reasons;
- areas for outdoor recreation and education / research.



That sounds like a lot. Is there anything else a conservation easement can accomplish?

A conservation easement can help to make sure that the values which guide how you care for the land are passed down to future owners of your property. A conservation easement can be used to prevent land subdivision or housing developments. Or perhaps you want to keep your land in the family after you pass on, but you worry that it won't be managed respectfully or treated with the care it deserves. A conservation easement can give you peace of mind that the land you've worked hard to preserve over the years will remain that way tomorrow, no matter who owns it.

What activities do conservation easements protect land from?

Land can be protected from human-caused changes which would damage or destroy the important features of the property now and in the future. For example, a conservation easement might be used by a landowner and the easement holder to prevent future owners from clear cutting a hardwood stand with rare plants in the understorey, or to prevent cottage development on a pristine lake shore, or protect a unique geological formation from being turned into a quarry. How the conservation easement is created is up to the landowner and the organization holding the conservation easement.





I'm looking after my land on my own now. What happens if I don't want to put one of those conservation easements on it?

That's your choice. Conservation easements are completely voluntary. No one can force you into placing a conservation easement on your land if you aren't interested. But one advantage of an easement is that it keeps on protecting your land long after it's stopped being yours.

Okay, I see. You mean a conservation easement can provide protection even if I sell my property?

That's right. Sell it. Give it away. Leave it in your will to your second cousin. A conservation easement attaches to the deed and is legally-binding on all present and future landowners of the land. A conservation easement will give you peace of mind that the land will be well cared-for long after you're gone.



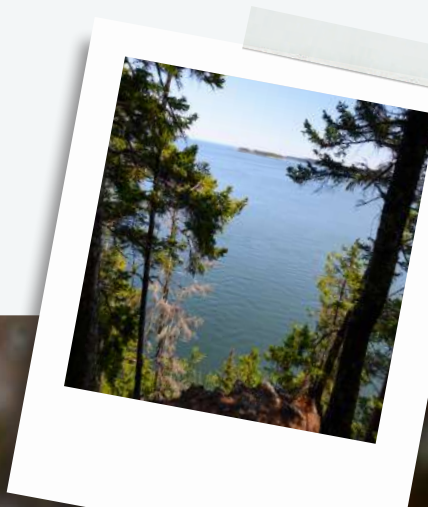
How do I know if my property qualifies for a conservation easement?

If there's something special about your land that you want to protect, chances are it will be possible to do so through a conservation easement. Of course, it will depend on the willingness of a qualified organization to hold the conservation easement. The Nature Trust might be interested in an easement to protect old growth forest land, for example. If you wish to protect a historically important site or buildings, you might try an organization like a local or provincial historical or heritage society.



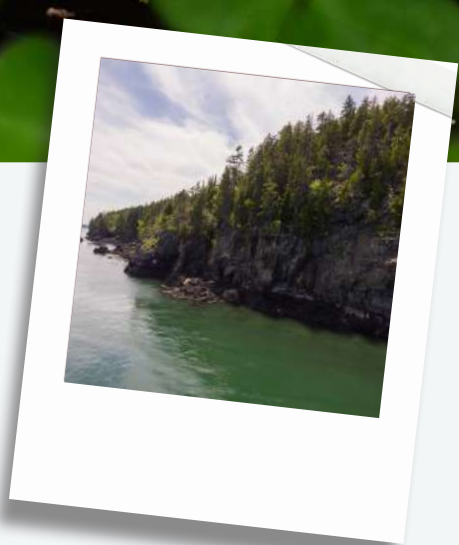
Who can hold a conservation easement?

A conservation organization like the Nature Trust of New Brunswick can hold easements. So can municipal, provincial or federal governments or any of their agencies. Easements can also be held by any charitable organization that is registered as an allowable holder of easements with the Canada Revenue Agency.



Do conservation easements last forever?

Most conservation easements do. In New Brunswick, the legislation allows conservation easements to be either perpetual or for a fixed term. Organizations which can hold easements, however, are sometimes reluctant to enter into fixed-term easements, believing that if the special features are worth protecting, they should be protected forever.



Would granting a conservation easement mean that I can't do anything with my property?

No. The terms and conditions of conservation easement are negotiated between the landowner and the organization holding the easement. Easements can be very specific, protecting only those features which the landowner wants to protect, and not interfering with the landowner's use of the rest of the property. It's very important to make sure at the outset that the easement is specific enough to protect what it is supposed to protect, but flexible enough to allow uses which do not threaten the integrity of the protected features.



Would an easement allow me to continue harvesting in my woodlot?

Sometimes harvesting can be done sustainably and in a way that maintains a forest's ecological value. A Working Forest Conservation Easement is a type of easement that can help a landowner to meet their harvesting goals while also protecting sensitive features in the forest. These easements are more complicated and can require more effort to make sure no harm is being done when harvesting timber. The Nature Trust can provide you with more information if this is something you are interested in.

If I grant an easement, does that mean I have to allow public access to my property?

No. Not unless you want to allow access and you make that part of the terms of the easement. The organization which holds the easement takes on the job of having a representative visit and tour the property with you at least once a year to ensure that the terms of the easement are being honoured, but the property remains private.



Who enforces the terms of the easement? What happens if I sell the land and the new owner ignores the easement?

The organization which holds the conservation easement is responsible for ensuring that the terms are enforced. At a minimum this means a visit once a year to see things are okay. But an easement is a legally binding agreement, and if the landowner chooses to ignore the terms of an easement, legal action can be taken to enforce them if necessary. Once an easement is in place, the landowner and the easement owner both have an obligation to ensure that the terms and conditions of the easement are complied with. Developing open lines of communication and a good understanding between the easement-holding organization and the landowners is very important.





Can I get out of a conservation easement if I change my mind later on? What if a new owner doesn't like the terms?

Not easily. In all cases, this will require the consent of both the landowner and the organization holding the easement. And the organization won't compromise on the original purpose of the easement: the protection of the important features of the property. Nor would the original grantor of an easement want a subsequent owner of the land to be able to simply change the terms and defeat the purpose of the easement. Plus, if the landowner gained a tax benefit from putting the easement in place, removing the easement years later could jeopardize these tax benefits (for a clearer understanding of individual cases please contact a tax lawyer).



What's in it for me? Are there any cash or tax benefits?

A landowner can donate or sell a conservation easement to any charitable organization that is registered as an allowable holder of easements with the Canada Revenue Agency. Donating a conservation easement could provide an income tax benefit to the landowner, but each case is different and the applicable taxation rules are complex. If you are considering an easement, you should consult an accountant.

Landowners can make a donation of the full value of an easement or a percentage of the value. The value of your donation is the difference between the value of the land before the easement was put on and the value after the easement was granted. Determining the value of the conservation easement and the donation depends on which kinds of uses the easement allows on the land.

The Ecological Gifts Program is a tool available to landowners, which provides additional tax incentives for those who donate conservation easements. One advantage is that these tax benefits can be used over a ten-year period.

If you would like more information about the program, contact the Nature Trust who can provide you with the important details about Ecological Gifts or visit the website here: <https://www.canada.ca/en/environment-climate-change/services/environmental-funding/ecological-gifts-program.html>





How do I know if my land is a good candidate for an easement?

A conservation organization will consider accepting the conservation easement so long as the land is deemed “ecologically sensitive” and the easement terms are acceptable to both parties. The Nature Trust considers the following land to be ecologically sensitive:

- land which supports an unusually high variety of plant and/or animal communities;
- land which supports populations and habitats of rare, threatened or endangered species;
- unique or representative ecosystems - land which includes outstanding and/or representative ecosystems, features, flora and fauna and/or unique plant/animal communities and/or habitats.

Sounds complicated. Does setting up an easement cost a lot?

Easements can and often do require property appraisals, land surveys, legal services, and ecological surveys to create the baseline report. The baseline report is a document that thoroughly describes the condition of the property at the time as well as the conditions of the easement, ensuring there is no uncertainty about what’s being protected. Easements also involve annual monitoring costs for the easement-holding organization to visit the property and ensure the terms of the easement are being upheld. Often, easement donors make a financial contribution to a stewardship fund that helps the conservation organization to care for the property in the future. You may want to consider doing this.



Okay. Now, how do I actually go about finding out if I can use a conservation easement to protect my property?

A good place to start is with a “pre-easement checklist” like you’ll find on page 17 and 18. Once you’ve gathered as much of the information on the checklist as you can, get in touch with the Nature Trust of New Brunswick or another qualified easement- holding organization.

And they’ll handle it from there?

Not exactly! Placing a conservation easement on property is personal to every landowner and time-consuming both for the organization and the landowner. The organization will do a lot of the work, but it is a collaborative process and partnership between both parties. You will want to talk to your lawyer and your accountant. Even under ideal conditions, this process will take at minimum six months to a year from the time you approach the conservation organization to the time the easement is in place. Complicated easements may take even longer.



PRE-EASEMENT CHECKLIST

If you're thinking about a possible conservation easement on your land, what should you do first? Start by putting together the information in the following check list. It will help you decide whether a conservation easement is the right way for you to protect your land. It will also help the Nature Trust determine whether your property may qualify for the easement.



1 Property Description

- Name of Owner(s)
- Address
- Phone #
- Property ID #
- Property Location
- Property Size (in hectares)
- Present Land Use (e.g. woodland, meadow, wetland...)
- Aerial Photo(s)
- Map of Property (showing location of important features, buildings, etc.)



2 How long have you owned the property?

3 Has an ecological survey been done for the property?

4 Has a woodlot management plan been done for the property?





5 Reason for Easement

Think long term:
What features will the easement protect?

- What do you want to be able to use the property for after the easement is in place?
- Will the easement apply to the entire property? If not to which parts?

6 Ecological Sensitivity

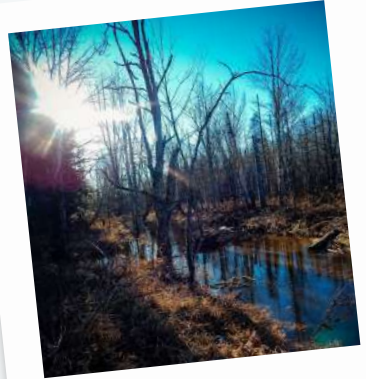
Does the land contain:

- Habitat which supports an unusually high diversity of plant and/or animal species (specify which plants/animals);
- Habitat which supports populations and habitats of rare, threatened or endangered species (if so, specify which species);
- Unique or representative ecosystems – these are lands that include outstanding examples a habitat type or species and/or truly unique plant and animal associations and/or habitats (describe).

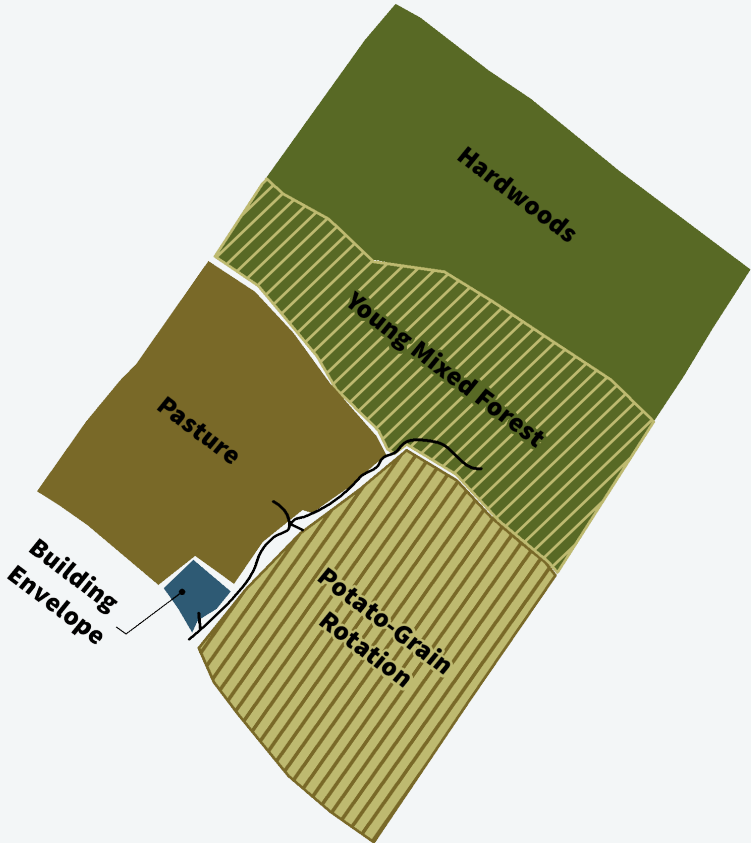


EASEMENT 1: FRED'S FARM

Fred owns a 100-hectare farm which has been in his family for generations. Fred is in his 80s and no longer actively farms the land. A neighbour pastures some of the fields, and another neighbour leases 25 hectares of the best agricultural land to rotate potatoes and grain on. Fred still takes care of the woods, which include about 40 hectares of nice old hardwoods - they've never been cut over, except for taking out a few cords of firewood every year. Fred has no children but wants to leave the property to a nephew to keep it in the family. The nephew lives in a different province and Fred is concerned that he will not care about the woods and will simply sell the wood for stumps. Fred also wants to be sure that the neighbours who are looking after the fields could continue to use it. The conservation easement he granted on the property protects the woods and allows these uses to continue.

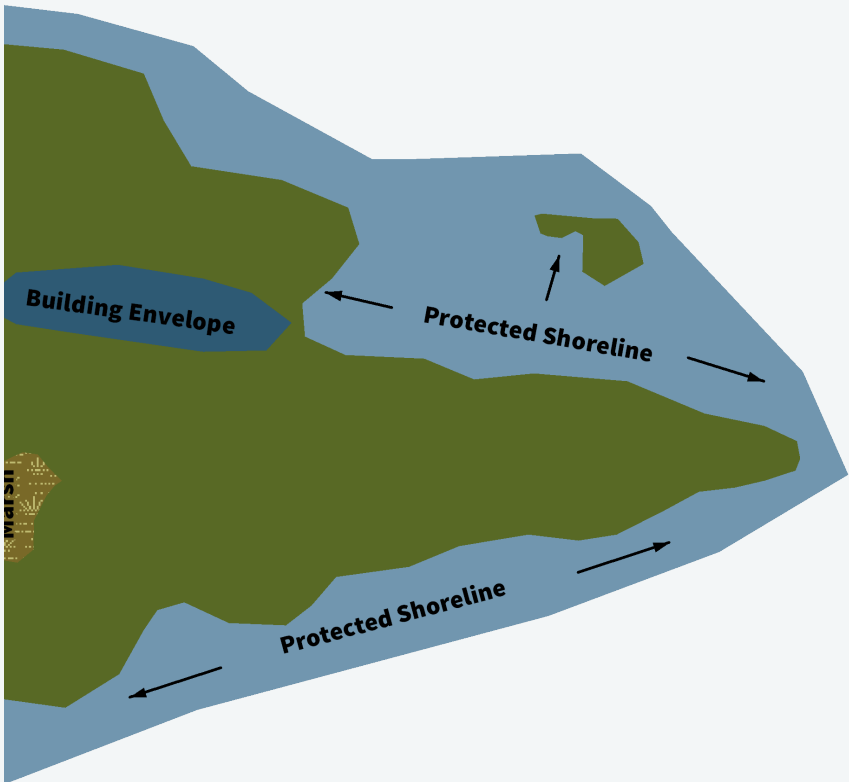


The conservation easement allows the land currently being farmed to continue in that use. It defines the area around Fred’s house and the farm as a “building envelope” in which construction for residential and farm purposes is permitted. It also defines the woodland area and stipulates that it is to continue as mature woodland, with maximum allowable annual harvest levels no higher than those Fred has been maintaining. Work in the woods is restricted to single tree selective cutting.



EASEMENT 2 : CAROL AND STEVE'S COASTAL PROPERTY

Carol and Steve inherited family property on the coast several years ago. The 100 hectares of land is located on a point jutting out into the bay and include almost two kilometres of coastline and a small wooded island not far offshore. The property includes a house where they began to spend their summers, enjoying the views and the opportunities for sea kayaking. Last year, with the help of the Nature Trust, they designed an easement to ensure that the features of the property which they appreciated would continue forever.





Carol and Steve’s conservation easement is designed to protect the coastline and the offshore island from any human interference. It defines a “building envelope” which includes the current house and allows some scope for future buildings. It protects the views of the coast both from the “building envelope” and from the water. It also protects a small inland freshwater marsh.

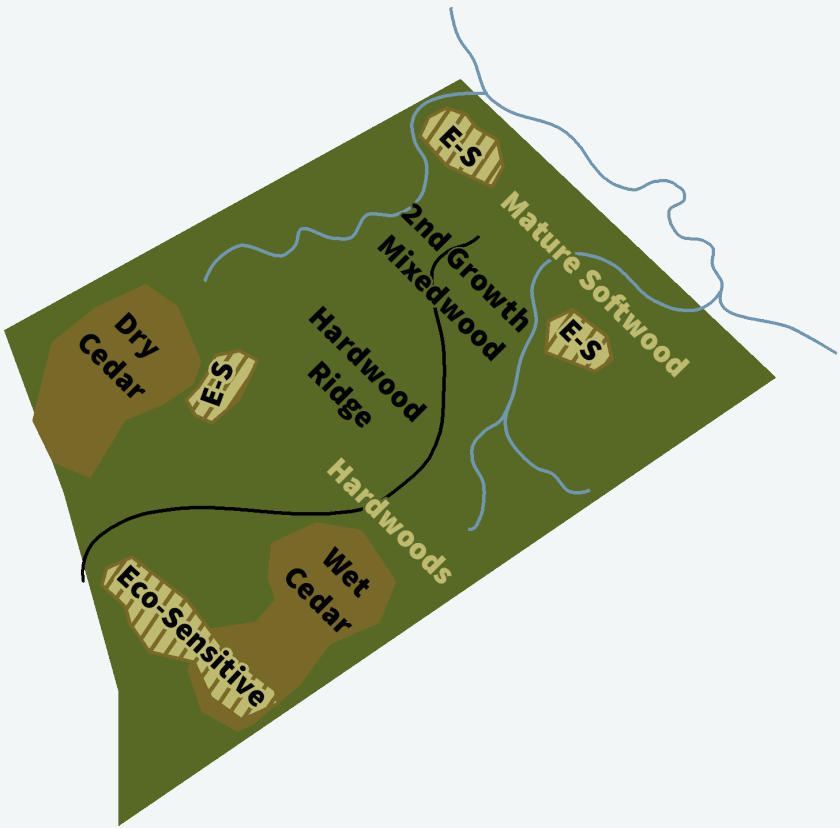
EASEMENT 3: HARVEY'S WOODLOT



Harvey owns and works 400 hectares of woodland although he doesn't live on the property. He has a forest management plan in place showing preferred treatments for different stands within the overall woodlot to produce income and to improve the stand. The woodland includes a hardwood ridge, mature spruce, balsam fir and other conifers, mixed second growth, mature cedar in both dryland and wetland sites, and several springs and small brooks, some of which flow only in wet seasons. Within the woodland there are half a dozen areas where understorey species diversity is unusually high and rare plants are found. These ecologically sensitive areas total less than 20 hectares in size but are scattered throughout the property. Harvey has never used large scale clear cutting as a management tool, although the management plan includes small patch cuts for stand improvement. Negotiations with a conservation organization produced a conservation easement for the entire property which included the management plan itself as part of the terms, protecting the sensitive areas and also ensuring that the property can continue forever as a well-managed sustainable working woodlot.



The conservation easement which Harvey negotiated with the Nature Trust of New Brunswick applies to the entire property. It incorporates the management plan, which includes some patch cuts for stand improvement in the mixed second-growth forest, and selective cutting elsewhere. The conservation easement locates each of the ecologically sensitive areas and protects them completely.





CLARK GREGORY NATURE PRESERVE
NEW BRUNSWICK





BELDING'S REEF NATURE PRESERVE
NEW BRUNSWICK

PAGE 2,3,16 BOTTOM RIGHT, 25, BACK COVER: Justin Dutcher

PAGE 13 BOTTOM LEFT: Jessica Bradford

PAGE 8 TOP RIGHT, PAGE 23 A. K. MacLean

PAGE 18, PAGE 22 TOP LEFT: Richelle Martin

PAGE 11 TOP LEFT: Jillian Hudgins

PAGE 16 BOTTOM LEFT: M. McGarrigle

PAGE 13, 14 BOTTOM RIGHT: N. El-Khoury



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