

## Preservation Easements

**Disclaimer:** Please note that the information offered by the National Trust is intended to provide general guidance only. Easements are legal tools defined by state laws (and, in some cases—if federal tax incentives are sought—by federal law) and the advice and assistance of a knowledgeable attorney, tax advisor, appraiser, and/or other professionals should be sought prior to using this tool.

### Introduction to Preservation Easements

The National Trust supports protecting historic properties perpetually through the use of a legal mechanism known as preservation easements (also known as covenants or restrictions). Preservation easements are conservation easements that protect properties that have historic, architectural, or archaeological significance and, in addition, can be used to preserve important natural land values that comprise the setting of historic buildings.

Preservation easements currently preserve thousands of historic properties across the United States—from single-family dwellings, complexes of buildings and nationally-significant historic landmarks to rural villages, cultural landscapes, farms and farmland—and a wide variety of resource types—from New England Cape Cod cottages to Southwestern archaeological sites, from Kentucky horse farms to mid twentieth-century Modernist houses in California. If conservation values such as open space, designed landscapes, or other natural, scenic, agricultural, or archaeological values are present on a historic site, the preservation of these important features of properties should be evaluated and considered for protection under a preservation easement as well.

Preservation easements are flexible tools; they can be crafted to address the specific characteristics of a property, the property owner's interests, and the mission, goals, and interests of the easement-holding organization. In many instances, preservation easements protect historic properties that are not under the purview of local historic preservation laws, and in these instances, the preservation easement may well be the only protection against demolition or alteration of a property's significant historic resources.

Protecting a historic property through the use of a preservation easement can have numerous benefits, including peace of mind that a cherished property is perpetually protected and in some cases, for properties listed on the National Register of Historic Places (individually or certified as a contributing property to a National Register historic district), a federal income tax deduction.

### Basic Information About Easements

An easement is a private, legal interest conveyed by a property owner to a qualified preservation organization or government agency. The donation of an easement is usually voluntary; once in place, however, most easements are perpetual (that is they are permanent) and bind both current and future owners to protect the historic character and values of the property. On occasion, an easement may last for a defined period of time (for examples, twenty or thirty years); this type of easement is referred to as a "term" easement and is often a condition of grant-funded projects on historic properties.

Legally, preservation easements are a "partial interest" in real property: owners retain numerous rights to the property (for example, the right to live in, use, maintain, sell, or give away) but transfer other specific rights to the easement-holding organization. These transferred rights protect a historic property from activities that would be inconsistent with the preservation of the property, such as the demolition or inappropriate alteration of historic buildings, or the subdivision of surrounding land. Preservation easements also typically protect against the deterioration of protected features by imposing maintenance obligations on the property owner.

The use of preservation easements is supported by state and federal preservation policies and laws that encourage public participation in the preservation of America's historic resources by providing an important economic incentive: property owners who donate qualified preservation easements to qualified easement-holding organizations may be eligible for a federal charitable tax deduction based on the value of the preservation easement, as provided for in the standards set forth by the Internal Revenue Service (IRS).

### Frequently Asked Questions About Preservation Easements

For more specific information on the following easement topics, please select one of the following links:

- ▶ [What is a preservation easement?](#)
- ▶ [What can a preservation easement protect?](#)
- ▶ [Are preservation easements the same as façade easements?](#)

- ▶ Who accepts or "holds" preservation easements? What is a "qualified" easement holder?
- ▶ Are fees charged by easement-holding organizations? What is a "stewardship" fee? Are there other costs to the easement donor?
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- ▶ Are there federal tax benefits for easement donations?
- ▶ Does the National Trust hold easements?
- ▶ Does the National Trust have a sample preservation easement available?
- ▶ I've heard that easements are under greater scrutiny by the IRS. Should I be concerned?
- ▶ Where can I get more information about preservation easements?

#### What is a Preservation Easement?

The term "preservation easement" is commonly used to describe a type of conservation easement – that is, a private, legal arrangement between a property owner and a qualified nonprofit organization or governmental agency for the purpose of protecting a historic property's conservation and preservation values. Preservation easements may also be referred to as "preservation covenants" or "preservation restrictions" and the terms are often used interchangeably. Conservation easements have long been used to protect land that has open space (including farmland, forest land, and land with scenic value), natural environmental value (including natural habitat), outdoor recreational value, or land that has historic, architectural, or archaeological significance.

Some easements last for a certain number of years (often referred to as "term" easements), with the interests of the easement-holding organization expiring at the end of the term. This type of easement is commonly required to receive grant funding or financial assistance from state or local governments or nonprofit organizations. Most preservation easements, however, are perpetual (that is, permanent), including any easements for which a donor plans to seek a federal income tax deduction.

The specific terms and requirements of an easement may vary depending upon a particular state's laws, which are often referred to as a state's easement "enabling law." Property owners and easement-holding organizations are advised to work with professionals (attorneys, tax advisors, and others) who are familiar with the state laws in which the property is located.

#### What can preservation easements protect?

Preservation easements typically identify: (1) the physical features of the property that will be preserved; (2) activities that could damage or destroy significant historic or architectural features and thus are prohibited; (3) activities that are permitted subject to the approval of the easement-holding organization; (4) activities that are permitted by the owner as a matter-of-right (with no oversight or involvement of the easement holder); and (5) maintenance obligations that a property owner must undertake. Preservation easements also address other issues, including requirements for maintaining property insurance, providing limited public access to the property, and steps the easement holder can take to enforce the easement.

Preservation easements are as varied as the properties they protect. At a minimum, most preservation easements protect the exterior character-defining features of historic buildings; many also preserve the historic setting of the protected buildings, sometimes including natural as well as designed landscape features. Preservation easements can also protect interior features of historic buildings. Finally, preservation easements can also control (or, in some instances, prohibit) additions to existing buildings or the construction of new buildings and structures on the property.

#### Are preservation easements the same as façade easements?

The term "façade easement" is often used to describe a type of preservation easement that only protects the exterior elevations (the "façade") of a historic building (and often, only those elevations that are visible from public ways). Typically, a "façade easement" refers to an easement placed on a property, such as a row house, in a more densely built urban environment. Exterior easements on properties in more rural settings often cover not only the exterior "façades" (that is, all elevations) of a historic building but also cover the land surrounding the building, sometimes referred to as the building's "context."

#### Who accepts or "holds" preservation easements? What is a "qualified" easement holder?

Preservation easements are generally donated to (and then subsequently referred to as "held by") either governmental agencies (such as the State Historic Preservation Office or a city or town through its local historic preservation commission) or by a nonprofit organization with a mission focused on historic preservation and/or land conservation. In order for an easement donor to qualify for federal tax benefits, the organization to which they donate a preservation easement must have (1) the preservation of historic places as a primary part of its mission and (2) the resources to monitor and enforce its easements. Many easement-holding organizations set aside easement endowments or stewardship funds to ensure that the organization has a long-term designated funding source for its easement obligations.

There are hundreds of organizations and governmental agencies across the country that accept and administer preservation easements. Most easement holders are based at the local level; however, state, regional and national organizations hold preservation easements as well.

The National Trust strongly encourages donating easements to an organization that has a well-established track record in historic

preservation and which is well-positioned to responsibly exercise a long-term stewardship role in its easement holdings. To find qualified easement holding organizations or agencies in your area, contact your State Historic Preservation Office.

**Are fees charged by easement-holding organizations? What is a "stewardship" fee? Are there other costs to the easement donor?**

Most easement-holding organizations request – or may require – that the donation of a preservation easement be accompanied by a one-time financial donation to the easement-holding organization. Sometimes referred to as a "stewardship fee" or "endowment contribution," this financial donation helps ensure that the easement-holding organization will have the necessary resources to administer its preservation easements, including routinely monitoring properties as well as legally enforcing a preservation easement, if necessary. Whether described as a fee or a contribution, this financial donation is considered by most easement-holding organizations to be an integral part of the preservation easement donation transaction. Donors wishing to seek a charitable tax deduction for the financial portion of an easement donation should seek the advice of a qualified attorney or tax advisor.

Easement-holding organizations use a variety of methods to calculate the amount of money required to responsibly administer each preservation easement they accept. There are a variety of ways that organizations calculate easement stewardship fees, including (i) a "flat" fee; (ii) a sliding scale with a cap; (iii) a percentage of the appraised value of the preservation easement; (iv) a percentage of the property's value prior to the easement donation; or (v) a capitalization model that estimates the annual expenses needed to responsibly administer the preservation easement.

Easement donors are likely to incur some additional costs beyond the stewardship fee or endowment contribution paid to the easement-holding organization. These additional costs include fees charged by attorneys, appraisers, and perhaps tax advisors; banks will occasionally charge fees for executing mortgage subordination agreements (for properties on which there is a mortgage). In all cases, donors are encouraged to seek the advice of qualified legal counsel and tax advisors if they are contemplating donating preservation easements.

**What constitutes the "baseline documentation" referred to in a preservation easement?**

"Baseline documentation" refers to the photographs, site plans, floor plans, and any other material that is incorporated into the preservation easement to document the scope of the preservation easement's protection and the existing conditions of the property and protected features at the time of the easement donation.

**If a historic property is already protected by a local preservation law (or is a contributing property within a locally regulated historic district), would preserving the property with an easement be redundant?**

Preservation easements and local historic preservation laws are two distinct legal tools. Easements use private legal rights of property owners to protect historic properties; local laws (or ordinances) use governmental regulatory powers. Preservation easements can be granted on properties already subject to local historic preservation laws; if the local preservation law is weak and the preservation easement is strong, the easement may provide more protection than the local law. A local law may, for example, authorize a municipality to delay but not prohibit demolition of a historic property, while a preservation easement protecting that same historic property may absolutely prohibit demolition of buildings on the property. And even in the case of a strong local preservation law, an easement may include terms that go beyond those protections offered by the local law. For example, preservation easements can protect interior architectural features or, in some cases, may require public access or visitation to the protected property, provisions that are rarely included in local preservation laws. Further, a preservation easement may prohibit the property's subdivision (or limit some other development right) into what might otherwise be buildable lots under a community's local zoning laws.

Where a preservation easement imposes conditions that are substantially similar to the local preservation laws, the easement may still provide substantial public benefit. Although local preservation laws have rarely been repealed or overturned in their entirety, the historic designation of individual properties – or even entire historic districts – could be (and in rare instances, has been) withdrawn by a municipality facing a threat or court challenge by a property owner or developer, or through being unduly persuaded by less preservation-minded or politically powerful forces. Even strong local preservation laws often include variance provisions, exceptions for cases of economic hardship or "special merit" – regulatory loopholes that are occasionally utilized by the owners of historic properties to allow development that would not otherwise be permitted under the local preservation law. In cases like this, preservation easements serve as an important supplement to the local preservation laws.

**Are there federal tax benefits for an easement donation?**

Property owners donating "qualified" conservation or preservation easements to a "qualified" easement-holding organization, under the regulations set forth in 170(h) of the Internal Revenue Code, may be eligible for a federal income tax deduction. The complexities of the federal tax code and the applicable IRS regulations are beyond the scope of this summary; however, this document contains some of the key provisions applicable to easement donations. Prospective donors are strongly advised to seek the advice of an attorney, tax advisor, and other professionals with experience in these areas.

**Does the National Trust hold easements?**

The National Trust strongly encourages regional, state, and local easement-holding groups to hold the preservation easements in their area. Under certain circumstances, the National Trust will accept easements on National Historic Landmark properties or other highly significant historic sites.

**Does the National Trust have a sample preservation easement available?**

A sample preservation easement is available by request via email. Contact us at [law@savingplaces.org](mailto:law@savingplaces.org).

**I've heard that easements are under scrutiny by the IRS. Should I be concerned?**

The IRS continues to actively audit, and in some cases litigate, in Tax Court and Federal Court, a number of easement donations. For more information, go to: [www.irs.gov/Charities-&-Non-Profits/Conservation-Easements](http://www.irs.gov/Charities-&-Non-Profits/Conservation-Easements).

**Where can I get more information about preservation easements?**

Many easement-holding organizations have comprehensive information available on the internet or through publications available for purchase. The following sources address issues related to preservation easements:

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- ▶ [The Land Trust Alliance](#) has extensive resources on conservation easements, and while the Alliance serves as a source of information and assistance to land trust organizations, much of that information is also relevant to preservation easements. The Alliance has a range of excellent publications on conservation and preservation topics including the [Conservation Easement Handbook](#) (with contributions by the National Trust for Historic Preservation) as well as a comprehensive set of "Standards and Practices" for land trusts, which the National Trust strongly recommends to organizations that currently hold (or intend to hold) preservation easements.
- ▶ The National Park Service also produces information and materials on the subject of preservation easements, readily accessible on the [internet here](#).

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