



# What is a Preservation Easement?

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An easement with the American Easement Foundation is a binding legal document designed to protect open space or a significant historic, archaeological, or cultural resource. The easement holder in effect “owns” that which the easement covers. The easement holder has a fiduciary responsibility to require current and future owners to follow the easement provisions.

It is a private legal contract recorded with the deed for the property between the owner and AEF for the purpose of protecting a property’s historic value or open space qualities. It is one of the most effective legal tools available for historic preservation. An easement provides assurance to the owner that their property’s intrinsic values will be preserved with all successive ownerships.

The term “preservation easement” is used commonly when referring to easements for historic properties, but the term “conservation easement” is the formal term used by the Internal Revenue Service to cover a range of easements, including those for historic resources. According to the Internal Revenue Service, “a conservation easement may be used to protect land for recreation, the natural environment, open space, or land that has an historic, architectural, or archeological significance.” (Note that AEF also holds open space easements as well as preservation easements.)

The donation of an easement to AEF conveys partial ownership in the real property to the organization. Each easement is created specifically for that property, however they all share the same objective to protect against changes that are inconsistent with the preservation of the property.

Inconsistent changes can include the construction of additions, demolition, construction of new structures, and inappropriate alterations. Conveying an easement to AEF also requires that appropriate levels of physical maintenance and safe conditions be upheld.

An easement gives AEF the legal authority and responsibility to enforce its terms. This includes the right to inspect the property and to require that owners comply with the easement conditions. Changes to the features subject to the easement may occur only with AEF approval. Restrictions on subdividing and development of the property are also common. The easement conveyance documents will specify the historic and character defining features of the property or the scenic qualities of the open space that are subject to the easement. If upon inspection AEF finds that the terms of the easement have not been upheld, the owner will be responsible for covering the costs of reversing an unacceptable treatment or face other penalties.

## Design Standards Applied

AEF must approve any work that affects the features defined in the easement. In determining what changes are appropriate for each easement property, AEF consults the Secretary of the Interior’s Standards for the Treatment of Historic Properties (36 CFR Part 68), published by the National Park Service. They serve as philosophical underpinning for AEF decisions. The Standards are intended to preserve those elements that will contribute to a building’s historic character and require that new additions or exterior alterations be compatible in mass, size, scale, and design of the historical structure.

AEF also draws upon the Preservation Briefs series, published by the National Park Service to provide guidance on preserving, rehabilitating, and restoring historic buildings. These NPS Publications help historic building owners recognize and resolve common problems prior to work. The briefs recommend methods and approaches for rehabilitating historic buildings that are consistent with their historic character. These briefs expand on the Secretary of the Interior's Standards and Guidelines for Rehabilitation of Historic Properties. AEF may draw upon information in these briefs when reviewing work proposed for easement donors.

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