



ANSWERS TO THE MOST COMMON QUESTIONS ABOUT CONSERVATION EASEMENTS

- 1. What is a Conservancy?** A Conservancy is a nonprofit organization with the mission to protect critical natural resources or conservation values for the benefit of the public.
- 2. What are conservation values?** Conservation values include natural, scenic, agricultural, historic or open space characteristics that make a parcel of land important for preservation.
- 3. What is a conservation easement?** A conservation easement (CE) is a voluntary legal agreement between a landowner and the Conservancy that allows a landowner to limit the type or amount of development on their property while retaining private ownership of the land. The easement is signed by the landowner, who is the easement donor, and the Conservancy, who is the party receiving the easement. Except for the purpose of monitoring the easement, the holder of the CE has no right to enter the property. The Conservancy accepts the easement with the understanding that it must enforce the terms of the easement in perpetuity. Another way to visualize a CE is to think of owning land as holding a bundle of sticks. Each one of these sticks represents the landowner's right to do something with their property. The right to build a house, to extract minerals, to lease the property, pass it on to heirs, allow hunting are all landowner rights. A landowner may give up certain development rights, or sticks from the bundle, associated with their property through a CE.
- 4. How is it different from a drain easement or a utility easement?** Drain easements and utility easements are "affirmative" easements. An affirmative easement is the right of one person to enter the property of another and "do something thereon". Affirmative easements are what most of us are familiar with. For example, right-of-way easements to permit passage to a landlocked property or utility easements, that permit the power or water company to enter the property to construct and maintain electric or water lines, are common affirmative easements. A CE is a type of "negative" easement, because it limits the right to do something.
- 5. What kinds of properties are eligible for a CE?** IRS regulations require that the property have "significant" conservation values. This includes forests, wetlands, endangered species habitat, beaches, scenic areas, working farmlands and more. The Conservancy also has its own criteria for accepting easements. At the invitation of the landowner Conservancy staff will evaluate the property to determine whether it meets these Conservancy criteria.
- 6. Why would a landowner want to place a CE on his or her land?** People grant CE's because they want to protect their property from unwanted development but they also wish to retain ownership of their land. By granting a CE a landowner can assure that the property will be protected forever, regardless of who owns the land in the future. Additionally, the donation of an easement may provide significant financial advantage to the donor.
- 7. What kind of financial advantage?** Many landowners receive a federal income tax deduction for the gift of a CE. The Internal Revenue Service allows a deduction if the easement is perpetual and donated "exclusively for conservation purposes." The amount of the tax deduction is determined by the value of the CE. There may also be significant reductions in estate taxes or property taxes

as a result of the existence of a CE. You should discuss with an attorney or your tax advisor how this may apply to your situation.

- 8. What activities are allowed on land protected by a CE?** The activities allowed by a CE depend on the landowner's wishes and the characteristics of the property. In some instances, no further development is allowed on the land. In other circumstances some additional development is allowed, but the amount and type of development is less than would otherwise be allowed. CE's may be designed to cover all or only a portion of a property. Every easement is unique, tailored to a particular landowner's goals and protect the conservation values of the land. You retain the rights to do what you want on your land, subject to the terms of the easement. For example, you may lease the land for hunting or farming or exercise any other normal landowner rights as long as the conservation values protected by the CE are not negatively impacted.
- 9. Must all of my land be included in the CE?** No, some easements only cover a portion of the landowner's property. It depends on your wishes. For example, if own 80 acres, of which 35 acres are wetlands, you may decide to restrict development only on these 35 acres. The remaining 45 acres would not be covered or affected by the easement.
- 10. Do I still own the land?** Yes. You can continue to live on it, sell it, mortgage it, pass it on to your heirs, etc. A CE is essentially a promise to preserve all or some portion of the open space on your property. You retain full rights to control and manage your property within the limits of the easement. You also continue to bear all costs and liabilities related to ownership and maintenance of the property. The Conservancy monitors the property to ensure compliance with the easement's terms, but it has no other management responsibilities and exercises no direct control over other activities on the land.
- 11. Does a CE allow public access to my land?** Only if you choose to allow access. Most easement donors do not want, and therefore do not allow, public access to their property.
- 12. Who owns the easement?** To qualify for a tax deduction the CE must be held by the government or a qualifying conservation or historic preservation organization. The Chippewa Watershed Conservancy qualifies as a federally recognized public charity under Internal Revenue Code Section 501(C)(3). In addition, the Conservancy is qualified to receive CE's under Michigan's Conservation and Historic Preservation Easement Act, PA 197 of 1980.
- 13. What effect does a CE have on a landowner's ability to sell or pass the land to his or her heirs?** The landowner continues to own the property after executing an easement. Therefore, the owner can sell, give or lease the property, as before. However, all future owners assume ownership of the property subject to the conditions of the easement. Evidence of the easement will be clear during a title search of the property, so no future owner will be surprised by its existence.
- 14. Does the Chippewa Watershed Conservancy accept all CE's that it is offered?** No. We have a formal process of evaluation and our Board of Directors has the ultimate authority to accept or decline a CE.
- 15. How is a CE different from other types of deed restrictions?** A land owner who depends upon deed restrictions to protect property will probably be disappointed. The most serious disadvantage to deed restrictions is that no third party can be designated to assume monitoring and enforcement responsibility. The law limits who can enforce the restrictions and for how long.

For example, if you insert restrictions in your deed and then sell or give the land away without retaining land nearby, your restrictions may not be enforceable by you or your successors.

- 16. Why not depend on “smart growth” zoning or other government regulations to assure that land with significant conservation values is protected?** Zoning and other government regulations can and do change, thus there is no guarantee that your intent will always be followed. A CE “runs with the land,” and can only be vacated by court action that finds a higher public benefit.
- 17. How will future landowners know about the CE?** After the easement is signed, it is recorded with the County Register of Deeds and applies to all future owners of the land. Any future title search will show existence of the easement.
- 18. What are the responsibilities of the Chippewa Watershed Conservancy with respect to the CE’s that it holds?** To be eligible for a federal income tax deduction the easement must be “perpetual,” that is, it must last forever. The Conservancy promises to uphold the terms of the easement forever and monitors the property once a year to assure that the terms are not being violated. If the easement terms have been breached the Conservancy will take whatever steps are necessary to uphold the provisions of the easement, including taking legal action.
- 19. What costs are incurred by the landowner in creating a CE?** Because of this obligation to monitor the land in perpetuity, the Conservancy asks all easement donors to make a financial contribution to the Conservancy's Endowment Fund. This fund ensures long-term monitoring and enforcement of every easement the Conservancy receives. If a landowner does not have the financial capacity to contribute to the Endowment Fund we will seek to find other contributors. We have never declined to work with a landowner who does not make a contribution to our Endowment Fund.
- 20. How is the value of the CE calculated?** If a landowner plans to take advantage of the charitable contribution benefits of a donated CE, or expects a reduction in estate or property taxes, an appraisal is required. This type of appraisal examines the “highest and best use” value of the property and calculates the value of the property before the CE and the value after the CE. The difference between these two values is the “development rights value” that has been extinguished by the CE.
- 21. Can I donate or sell my land rather than an easement?** The Conservancy is happy to receive donations of land and charitable contributions may be taken for donations of land as well as for easements. In order to take a charitable contribution, the value of the land should be established by an appraisal by a qualified appraiser. In some cases the Conservancy buys land for preserves or we may be able to assist in locating a conservation buyer for your land.
- 22. What is a Conservation Buyer?** A conservation buyer is a person who is interested in purchasing land with the preservation of open space, wildlife habitat or scenic views in mind.
- 23. What else should I consider?** See section 170(h) of the Internal Revenue Code for additional details about conservation easements and always consult your attorney or tax advisor to determine how the regulations apply to your particular situation.

For more information about conservation easements contact the Chippewa Watershed Conservancy, 6801 W. Airline Rd., Weidman, MI 48893, phone (989) 644-5045, email info@ChippewaWatershedConservancy.org, or see our Web site at www.ChippewaWatershedConservancy.org