



Crothers Farm Conservation Easement/Todd Parker

# The Conservation Easement

*As a land protection and  
financial planning tool*

2018 edition



**The conservation easement** can be an ideal tool for landowners who want to preserve their land's natural and historic heritage for future generations, while maintaining private ownership. Land protected with a conservation easement need not be open to the public and continues to carry many of the normal benefits of private land ownership.

The primary motivation behind a conservation easement must be conservation. In addition to protecting conservation values, landowners may also enjoy financial benefits resulting from their decision to place an easement on their land. Several provisions in state and federal tax laws help make this decision a bit easier.

Remember...while it is perhaps the most creative tool, the conservation easement is just one of a handful of conservation opportunities available today for your land. We welcome you to contact the Little Traverse Conservancy staff who can share additional information on these and other programs with you.



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**In 1972**, the Little Traverse Conservancy was organized by a handful of citizens who shared the common goal of working with landowners to protect the natural beauty of northern Michigan. Today (2018), the Conservancy has nearly 4,000 members and has protected nearly 60,000 acres which includes more than 142 miles of shoreline throughout Michigan's northern lower and eastern upper peninsulas. The common thread running through each of these land projects is that they are all designed to protect the natural character of northern Michigan for the present and future generations.

One of the Conservancy's guiding principles is that private land owners have as much right to protect their land as they do to develop it. This goes against the conventional wisdom, developed in the 19th and 20th centuries, that land development is every property's destiny. But as the 21st century dawns, many land owners are recognizing that times have changed and the development pendulum has swung too far. There may have been a day when it was necessary to protect a growing civilization from the ravages of the wild, but in the era of "urban sprawl," "monster homes" and "big-box development," many land owners are using their property rights to protect what's left of the wild from the ravages of civilization.

This brochure is intended to explain the conservation easement as a land protection tool. The first two sections explain what a conservation easement is and provide a list of sample easement provisions. The next section describes the financial considerations of granting a conservation easement. The last section provides five case studies illustrating different ways in which conservation easements can be used to protect land and meet owners' needs.

If you are interested in a conservation easement for your property, we encourage you to contact our office for additional information.

# The Hows and Whys of a Conservation Easement

## What is a conservation easement?

A conservation easement is a voluntary agreement that allows a landowner to limit the type or amount of development on their property while retaining private ownership of the land. It is a legal document restricting future uses of the land. The easement is agreed upon and signed by the landowner (the easement donor) and the Conservancy (the party receiving the easement). The Conservancy accepts the easement with the understanding that it must enforce the terms of the easement in perpetuity. After the easement is signed, it is recorded with the County Register of Deeds and applies to all future owners of the land.

Another way to visualize a conservation easement is to think of owning land as holding a bundle of rights. Each one of those rights represents the landowner's ability to do something with their property. The right to subdivide, build, and to extract minerals are all rights that the landowner has. A landowner may give up some of these rights through a conservation easement and protect the land's natural values.

Conservation easements offer great flexibility. An easement on property containing rare wildlife habitat might prohibit any development, for example, while one on a farm might allow continued farming and the building of additional agricultural structures. An easement may apply to just a portion of the property, and entire property, or an excluded zone within the property. It is up to the landowner whether they would like to provide public access or not.

## Why do people grant conservation easements?

People grant conservation easements because they want to protect their property from future unwanted development but they also wish to retain ownership of their land. A conservation easement ensures that the property will be protected forever, regardless of who owns the land in the future. An additional benefit of granting a conservation easement is that the donation of an easement may provide significant tax and estate planning advantages to the donor.

## What activities are allowed on land protected by a conservation easement?

The activities allowed by a conservation easement 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 (such as for agricultural use) but the amount and type of development is less than would otherwise be allowed.

Conservation easements may be designed to cover all or only a portion of a property. Every easement is unique, tailored to a particular landowner's goals for their land. Agricultural activities and timber management are two activities that are sometimes retained within the easement terms. See page 8 for a list of other commonly reserved rights and restrictions.

## Can the landowner still sell or give the property away?

The landowner continues to own the property after executing a conservation easement. Therefore, the owner can sell, give, or lease the property as before. However, all future owners of the land must abide by the terms described in the conservation easement.



Todd Parker

Wilson Maple River Conservation Easement

## Does the public have a right of access to easement-protected property?

The public does not have access to property protected by an easement unless the original landowner who grants the easement specifically allows it. Most easement donors do not allow public access to the property.

## How long does an easement last and who upholds it in the future?

To be eligible for a federal income tax deduction, the easement must be perpetual - it must last forever. Generally once a year, the Conservancy monitors the property to assure that the easement is not being violated. If the easement has been breached, the Conservancy is entitled to take whatever steps are necessary to uphold the terms of the easement, including legal action.



Nancy Payne

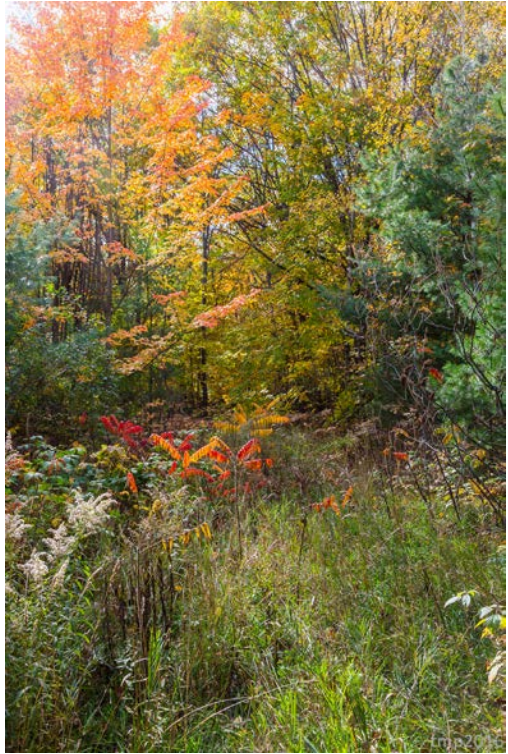
Waldron Conservation Easement

## Who owns and manages the protected land?

The landowner retains full rights to control and manage their property within the limits of the easement. The landowner continues to bear all costs and liabilities related to ownership and maintenance of the property. The Conservancy monitors the property annually 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.

Does the easement have to cover all of the landowner's property? No, some easements only cover a portion of the landowner's property. Again, it depends on the landowner's wishes.

What kind of land can be protected by a conservation easement? IRS regulations require that the property have "significant" conservation values. This includes forests, wetlands, endangered species habitat, beaches, scenic areas, and more. In those instances in which a landowner chooses to allow public access, IRS recognizes this as a public benefit. 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 criteria. Ultimately, the Conservancy's Board of Trustees decides which easements to accept.



Bennett Conservation Easement

### Why might an easement not be accepted?

Not every property is appropriate for a conservation easement. Some of the reasons why an easement would not be acceptable include: 1) the property is too small or does not meet Conservancy land protection criteria; 2) the complicated nature of the property makes it too difficult to enforce the conservation terms; or 3) The property is part of a permit/mitigation scenario. These issues will be thoroughly discussed with Conservancy staff.

## Sample Conservation Easement Terms

Some conservation easements prohibit all future development. In other circumstances, the landowner wishes to retain some development rights. The Conservancy works with each landowner to draft an easement to fit the personal needs of the landowner and the unique characteristics of their land. The following are examples of common easement provisions:

### Commonly Reserved Rights

- The right to sell, mortgage, give, or otherwise convey the property, subject to the easement.
- The right to farm.
- The right to manage timber according to an approved plan.
- The right to ecological restoration.
- The right to construct and maintain trails.

### Common Restrictions

- No buildings allowed except those specified in the easement document.
- No draining or filling of wetlands.
- No surface mining.
- No industrial or commercial use of the property other than forestry or agriculture.
- No dumping trash or hazardous waste.
- No advertising billboards.
- No further division of the property (except under guidelines set out by the landowner).
- Timber harvest or vegetation removal may be restricted to some level.



# Tax and Other Financial Considerations

In Michigan, thanks to a law passed in 2006, lands encumbered with a conservation easement can now be transferred without a “pop-up” in the property taxes. This means that when the land is sold, donated, or inherited, property taxes will remain “capped” and the new owner will be paying property taxes based upon what the original landowner was paying. This provision does not apply to value of buildings or structures.

In some cases, the conservation easement may reduce the value of the property to a level less than the current assessment.



Gaines Family Conservation Easement

This could translate to lower property taxes for the landowner who donates the conservation easement, but each case must be carefully assessed and appraised to determine possible property tax impacts.

If the conservation easement meets the requirements of the IRS Code Section 170(h), it may be considered a “non-cash gift” for federal income tax purposes. The amount of this gift would be established by a qualified appraisal, ordered by the donor, that determines the value of the Property before the conservation easement (the “before” value) and the value of the land subject to the terms of the conservation easement (the “after value”). The difference between the before value and the after value is the amount that potentially could be deducted from the landowner’s income taxes. IRS regulations allow the landowner to deduct a percentage of their adjusted gross income for each year over a period of time.

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As of September 2014, eligible conservation easement donors can deduct up to 50% of their adjusted gross income (AGI) and allows for the deduction to be spread over up to 16 years. Qualified farmers can deduct up to 100% of their AGI. These are variables are currently being debated in Congress and may become permanent or there may be changes in the near future. So, you should give us or your tax advisor a call to determine if there have been changes that might affect if updated rules might affect how your conservation easement may be deducted in the future.

As you might expect, there are many factors involved when considering whether to pursue a federal income tax deduction for a donated conservation easement. First, it has to meet the IRS code which can be difficult to interpret. While the Conservancy will always try to point out how we interpret that a conservation easement might meet the IRS code, it is the landowner who bears the burden of proof should they be audited. There are also strict appraisal standards that must be met. Obviously each landowner's specific tax situation (including income and other deductions) will dictate how much this type of tax deduction may mean. Landowners should consult their personal tax advisors and a qualified appraiser before deciding to pursue a federal income tax deduction for a conservation easement.

In certain situations, estate taxes might also be reduced if the conservation easement meets the IRS code mentioned above and if it reduces the overall taxable estate. Again, this can be a complicated process and landowners should consult with experts as to how a conservation easement might affect their estate tax situation.

### **Costs to Landowners**

The landowner may incur some expenses associated with placing an easement on their property. If the landowner claims a tax deduction and the easement is worth more than \$5,000, the landowner is required to hire a qualified appraiser to determine the value of the easement. In addition, the Conservancy invites easement donors to make a financial contribution to the Conservancy's Easement Endowment Fund. This contribution helps defray the expenses of executing the easement and the long-term costs associated with monitoring and enforcing the easement. Making an endowment contribution is encouraged, but not required by Little Traverse Conservancy.



Angell Farm Conservation Easement

## Sample Financial Benefits of Donating a Conservation Easement

The following example illustrates the potential financial benefits of a conservation easement. Of course, each situation is different, and landowners are encouraged to seek professional advice from their accountants and/or attorneys. (Note: The Alternative Minimum Tax may have an effect upon federal income tax deduction.) To illustrate the potential tax savings from donating a conservation easement, assume that a married couple filing jointly have an adjusted gross income in 2013 and for the three following years of \$100,000 and that they are in the 25% tax bracket. (Keep in mind that the law allows the tax savings to be spread over up to 15 years.) In 2013, they donated a conservation easement on their property and the charitable contribution is appraised at \$175,000. Their tax savings are calculated as follows:

Year	Charitable Deduction	Limitation (50% AGI)	Carry Forward	Tax Savings
1	\$175,000	\$50,000	\$125,000	\$14,000 (\$50,000 x 28%)
2	\$125,000	\$50,000	\$75,000	\$14,000 (\$50,000 x 28%)
3	\$75,000	\$50,000	\$25,000	\$14,000 (\$50,000 x 28%)
4	\$25,000	\$50,000	\$0	\$7,000 (\$25,000 x 28%)

Total Federal Income Tax Savings = \$49,000

# Steps for Donating a Conservation Easement



Once a landowner has decided to convey a conservation easement to the Little Traverse Conservancy, a number of steps are required by both the landowner and the Conservancy. Listed below are the basic steps required, while unusual circumstances may require additional steps.

	Responsibility	
	<i>Landowner</i>	<i>Conservancy Staff</i>
Step 1. Tour the property to evaluate the natural resources and determine if an easement is appropriate.	X	X
Step 2. Submit project evaluation form to Conservancy Board for their approval.		X
Step 3. Negotiate the restrictions and draft the document.	X	X
Step 4. Landowner consults with legal and tax advisors.	X	
Step 5. Prepare baseline documentation.	X	X
Step 6. Obtain record of good title and mortgage information.		X
Step 7. Obtain mortgage subordination from lender if lean exists.	X	X
Step 8. Obtain a “qualified appraisal” (if claiming a federal tax deduction of more than \$5,000).	X	
Step 9. Sign and record final version of easement.	X	X
Step 10. Easement is monitored annually.		X