

Frequently Asked Questions About Conservation Easements

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. The easement is signed by the landowner, who is the easement grantor, and a land trust, such as West Pikeland Land Trust, French and Pickering Creeks Conservation Trust, Natural Lands Trust, or Brandywine Conservancy, which is the party receiving the easement. A land trust accepts the easement with the understanding that it must monitor the easement yearly and, if necessary, enforce the terms of the easement in perpetuity. After the easement is signed and notarized, it is recorded with the County Recorder 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 sticks. Each one of these sticks represents the landowner's right to do something with their property, i.e., the right to build a house, to lease the property, pass it on to heirs, to allow hunting, erect fencing, etc. are all rights the landowner holds. A landowner may limit or give up certain development rights, or sticks from the bundle, associated with their property through a legal document called a conservation easement.

Why do people grant conservation easements?

People grant a conservation easement because they care deeply for their land and wish to protect it from unwanted development, but they also wish to retain ownership of their land. By granting a conservation easement a landowner can assure 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 or sale of an easement may provide financial advantages to the landowner.

What kind of financial advantages result from granting an easement?

A landowner may receive a federal income tax deduction for the gift of a conservation easement. The Internal Revenue Service allows a deduction of the easement value if it is perpetual, is donated "exclusively for conservation purposes" and meets the IRS requirements for a "Qualified Conservation Contribution" under the Internal Revenue Code. The amount of the tax deduction is determined by an appraised value of the conservation easement.

Alternatively, the landowner may wish to receive compensation from West Pikeland Township for granting a conservation easement on their property, provided the property meets certain criteria established by the West Pikeland Land Trust and the township.

What activities are allowed on land protected by an 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. 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 and the conservation values of the land.

Can the landowner still sell or give the property away?

The landowner continues to own the property after executing an easement agreement. 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 conservation easement. The conservation easement runs with the land in perpetuity.

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. Some landowners do not want, and therefore do not allow, public access to their property. However a landowner might consider granting a trail right of way if the property could create a link to a local trail system. However, it is not required.

Who owns the conservation easement?

To qualify for a tax deduction, the easement must be donated or otherwise granted to and held by a government agency or qualifying 501(c)(3) non-profit conservation organization, such as West Pikeland Land Trust, Natural Lands Trust, Brandywine Conservancy, and French & Pickering Creeks Conservation Trust.

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,” that is, it must last forever. The land trust monitors the property, generally once each year, to assure that the easement is being upheld. If the easement has been breached, the land trust will take whatever steps are necessary to uphold the terms of the easement, including taking legal action. Because of this obligation the land trust holds an easement endowment fund on each property. This fund may be established by the landowner or by the Township. This fund ensures long-term monitoring and enforcement of every easement the land trust holds.

Who owns and manages easement-protected land?

The landowner retains full rights to control and manage their property within the limits of the easement. The landowners continue to bear all costs and liabilities related to ownership and maintenance of the property. The land trust 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. However, the land trust may, upon request, offer management advice.

Does the easement have to cover all of the landowner’s property?

No, some easements cover only a portion of the landowner’s property, according to the landowner’s wishes. For example, if a landowner own 80 acres, the landowner may wish to retain the right to subdivide a few building lots. However, retaining development rights would most likely lower the value of the easement.

What kind of land can be protected by a conservation easement?

IRS regulations require that the property have “significant” conservation values. This includes woodlands, wetlands, endangered species habitat, scenic areas, historic sites, and more. The West Pikeland Land Trust, which is the Open Space Advisor to West Pikeland Township, has its own criteria for accepting easements. At the invitation of a landowner, a West Pikeland Land Trust member will evaluate the property to determine whether it meets certain criteria, and discuss the details of a land preservation project.