



**Michigan Association of Planning  
A Chapter of the American Planning Association**

*Excerpted from the MSPO Community Planning Handbook*

## **Conservation Easements**

### **Description**

A conservation easement is a method of preserving open space without purchasing all rights to a parcel of property. Rather than obtaining fee simple, or complete ownership, an organization or community can purchase or acquire by gift an “easement” to the property. In granting a conservation easement, the land owner gives up or sells a portion of their property rights. A conservation easement can be used to protect natural resources (land) and/or cultural resources (buildings).

Common users of conservation easements include:

- American Farmland Trust’s use of conservation easements to protect farmland.
- Little Traverse Conservancy’s use of conservation easements to preserve historic sites or buildings.
- An Historic District Commission’s use of a conservation easement to preserve historic sites or buildings.
- A planning commission’s use to preserve open space in a PUD, site condo, or subdivision project.

An easement is part of the bundle of property rights; it is a right to use land for a designated purpose. If an easement permits an activity on a parcel, it is an affirmative easement. An example of an affirmative easement is granting the right of passage over one parcel of property to get to another. If an easement prohibits the owner of the land from doing something to the property, then the easement is a negative easement. An example of a negative easement is prohibiting the clear cutting of trees.

Either type of easement may be considered appurtenant or gross. An appurtenant easement is one that benefits an adjoining piece of land (e.g. the right to pass over one parcel to get to the other). A gross easement is granted to a party who is not an owner of an adjacent property, but who has an interest in the property for which an easement is granted (e.g. protecting the land as “forever wild” for future generations). Most conservation easements are “negative” and designated as “gross.”

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#### Conservation easements:

- May be designated for a specified period of time, but most conservation easements are granted in perpetuity.
- Are very flexible, the owner may restrict, limit or decide how development will proceed on their parcel.
- Do not remove the land from the tax rolls, although tax benefits under 170H of the Internal Revenue Code) can be derived from granting easements.
- Do not automatically allow public access to the land, unless that is part of the easement agreement.
- Do not limit the owner's right to lease or sell the land, but easements run with the property, not with the owner- so a subsequent owner is bound by the same easement conditions as the former one.
- May specify the maximum number of houses that may be located on a particular parcel.
- May specify what the land may be used for in future years.
- May identify where structures may or may not be placed.
- May provide access for fishing and hunting.
- May provide for future activities like construction of trails or other recreation facilities.
- May prohibit location of commercial, multifamily structures or billboards, or other uses on a parcel.
- May prohibit alterations to an historic structure not in character with the era in which it was built.
- May prohibit excavation or removal of gravel, soil, and/or vegetation.

#### **Planning Considerations**

Promotion or acceptance of conservation easements should be based on a community or regional assessment of conservation needs (see Environmental Quality and Natural Resource Plans). Haphazard, scattered, small easements may only create development problems for a community in the long run. Local policy should be established as to if or when to acquire a conservation easement, and what restrictions should be imposed. A systematic method of mapping and recording easements can help ensure adequate administration. It is a strategic tool to use when:

- A community is making efforts to maintain their character by protecting scenic vistas, or unique natural features.
- Pursuing open-space or farmland preservation objectives.
- Protecting sensitive environments.
- Protecting rare and endangered species habitat.

When setting the value of a conservation easement for purchase or tax benefits, appraisals should be made by a competent land appraiser familiar with conservation

easements. In general, the value of the donated easement is equal to the value lost in the land due to restrictions in development potential.

### **Advantages**

- Valuable resources can be conserved without expensive fee-simple purchase.
- The land still remains in private ownership.
- Private owners derive tax benefits for their contribution.
- Avoid "takings" challenge by purchasing rights.

### **Disadvantages**

- Restrictions set forth in easements may limit marketability of a parcel of land.
- Monitoring easements in perpetuity may be difficult.
- Problems can arise if new land owners are not made aware of easements. Easements need to be properly documented and monitored.

### **Limitations**

- When an easement is granted, the grantee should take great care to make sure the organization has the resources to monitor the easement in perpetuity.
- Easements are desirable on large parcels or those with unique and significant resources (e.g., scenic vistas, sensitive environments like wetlands or floodplains, habitat that harbors rare or endangered species).