Questions and Answers about Conservation Easements

Following are some questions and answers that will help you understand how conservation easements can be used to protect your land and the role a land conservancy plays in the land protection process.

What is a conservation easement?
A conservation easement is a written, notarized, legal agreement between a landowner and a qualified organization such as a land conservancy, that restricts development on the property and may restrict certain other uses. The conservation easement is signed by both parties and recorded with the local, governmental recording agency, typically the register of deeds.

What uses and activities are typically prohibited?
New residential, commercial, and industrial developments are prohibited. Subdivision of the property is normally prohibited. New mining, billboards and other activities that negatively affect the conservation values of the property are not allowed.

What uses and activities are typically permitted?
At the discretion of the landowner, agriculture, forestry, hunting, habitat management, wildlife management, passive activities such as hiking, skiing can be allowed. All such uses are described and limited in the details of the conservation easement document.

Does the conservation easement give the public the right to enter the property?
No. The landowner has sole authority regarding who may enter the property. The property remains in the private ownership of the landowner.

Does a conservation easement need to cover a landowner's entire property?
No. A landowner can place all or a portion of the property under a conservation easement.

Does a conservation easement restrict the ability of the landowner to sell or otherwise transfer ownership of the property?
No. A landowner can sell or otherwise transfer ownership of the property to whomever they decide and for whatever price. Conservation easements are permanent, they exist in perpetuity and run with the deed. All future landowners must follow all the provisions of the conservation easement.

Are there financial benefits to placing a conservation easement on a property?
Yes. There are federal and state income tax, property tax, and estate tax benefits for donating a conservation easement to a qualified organization. Landowners need to consult their tax advisor for tax advice. Land conservancies can provide general guidance but do not give individual tax advice.

How are conservation easements enforced?
A land conservancy is legally required to uphold the provisions of the conservation easement in perpetuity. The conservancy monitors the property at least yearly, documents the monitoring visits, and remedies any conservation easement violations. The periodic visits with the landowner allow the conservancy to discuss any uses and activities of the land that may conflict with provisions of the conservation easement before a violation actually occurs.

Potential Federal Income Tax Benefit of Donating a Conservation Easement and Additional Tax Information on the Donation Process

A Hypothetical Example of the Donation of a Conservation Easement

Land conservancies typically do not give specific individual tax, legal, or financial advice. Landowners need to consult their own tax, legal, and financial advisors to determine how the donation of a conservation easement to a qualified land conservancy will affect their taxes. What follows is a hypothetical example.

This is a hypothetical example.
A landowner owns a 100-acre property in Michigan with a house and some other buildings. The rest of the property is natural land, for example, grassland, wetlands, shrub thicket, forest, agricultural land or some combination. In this example they are not farmers. There is no conservation easement (CE) on the property and therefore the property could be developed for residential, commercial, or industrial use; whatever local zoning permits.

The landowner decides to place a CE on the property which prohibits residential, commercial, or industrial development on the property, and donate the CE to a qualified land conservancy. A building envelope that contains all existing permanent buildings is excluded from the land placed under the CE. An appraiser determines that the fair market value of the property without the CE on the property (and with the building envelope excluded) is $500,000. This is called the “before value” or “unrestricted value”. The appraiser then determines that the fair market value of the property with the CE on the property (and with the building envelope excluded) is $300,000. This is called “after value ” or “restricted value”. This means the value of the CE is $200,000.

- Value of the property without the CE (without building envelope) (before value, unrestricted value): $500,000
- Value of the property with the CE (without building envelope) (after value, restricted value): $300,000
- Value of the CE: $200,000

The landowner donates the CE to a qualified land conservancy. The landowner can then claim a charitable donation of $200,000 on their federal income tax forms the year they donate the CE and can deduct up to 50% (farmers, 100%) of their adjusted gross income (AGI) that year. If they do not use up the entire deduction the first year, the excess can be carried forward and deducted (with the 50% or 100% limit) for up to 15 additional years.

Assume the landowner has an AGI of $70,000 in the year the donation is made, and further assume their AGI remains the same for the next 15 years. The landowner will be able to deduct a maximum of $35,000 each year [$70,000 x 0.5 (50%] = $35,000) until the entire donation is used.

The tax saving a landowner realizes each year for a donation of a CE is a function of the tax bracket and income of the landowner. Assume the landowner is in the 28% tax bracket each year and their AGI remains the same each year. Their tax saving the first year would be: $35,000 x 0.28 = $9,800. The remaining $165,000 ($200,000 – $35,000 = $165,000) would be carried forward to future years. Their total federal income tax saving is shown in the table below.

Year	Deduction ($70,000 x 0.5)	Income Tax Savings
Year 1	$35,000.00	$9,800.00
Year 2	$35,000.00	$9,800.00
Year 3	$35,000.00	$9,800.00
Year 4	$35,000.00	$9,800.00
Year 5	$35,000.00	$9,800.00
Year 6	$25,000.00	$7,000.00
Years 10 - 16	$0.00	$0.00
Total For 6 Years	$200,000.00	$56,000.00

Currently, appraisals for conservation easements typically cost $2,000 – $4,000. Obtain advice from your tax advisor or the IRS, or both, on appraisers, appraisals, and other items.

Michigan Public Act 446 – Property Tax Relief for Land with a Conservation Easement

A powerful incentive for private land conservation is Public Act 446 of 2006, signed into law in 2006.

What does Public Act 446 do?
Under the General Property Tax (GPT) Act, a property's taxable value, in any one year, may only increase 5% or the rate of inflation, whichever is less. However, on transfer (e.g. sale) of ownership of a property, under GPT the taxable value of a property increases ("pops-up") to the State Equalized Value ***unless*** the transfer is ***not*** considered to be a "transfer of ownership". The GPT Act lists a number of transactions that are not considered to be a "transfer of ownership". Public Act 446 (PA 446) states that land under a conservation easement (CE) is added to this list of exceptions, that is, when ownership of land under a CE is transferred it is not considered to be a "transfer of ownership" for the purposes of the GPT Act. As a result PA 446 eliminates the "pop-up" of property tax on property that is covered by a CE when it is transferred to a new owner.

Stated more specifically, Public Act 446 amends the GPT Act to specify that a "transfer of ownership" does not include a transfer (e.g. sale) of land that is: (i) subject to a CE (also called a voluntary conservation agreement) under Subpart 11 of Part 21 of the Natural Resources and Environmental Protection Act or (ii) where a transfer of ownership or interest in the land is eligible for a deduction as a qualified CE under the federal Internal Revenue Code. This exemption does not apply to buildings and other structures located on the land.

This bill should help property owners whose property has a CE in two ways:

(i) It should make such properties more attractive to buyers since there should be no or little increase in property tax for the new owner at the time of transfer; and

(ii) It makes it more feasible for open space land (natural land and farmland) owned by a family to be transferred to the next generation, again because there should be no or little increase in property tax for the new owner at the time of transfer.

How does PA 446 benefit land conservation?
The elimination of the "pop-up" of the property tax provides a good incentive for landowners to place a CE on their property, and with a CE on the land, development of the land is prevented and land conservation is achieved.

Previous to the signing of PA 446, property tax on lands with a CE typically increased dramatically upon transfer (sale) of the land. This was because they were treated the same as land without a CE even though development on them was permanently prohibited. This was a strong disincentive for landowners to place a CE on their land since land under a CE could not be developed and the development rights value of the land was lost.

How does PA 446 benefit private landowners?
It makes it easier for a landowner whose land has a CE on it to sell the land, and it keeps the property tax low for future owners of that land.

A hypothetical example:
Assume a 100-acre open space property has a current taxable value of $50,000 and a State Equalized Value of $200,000. Further assume the property is under a CE, that it has an annual property tax of $1,000, and it is sold. Under PA 446 the property tax for the new landowner remains at $1,000. Without PA 446 the property tax would pop-up to $4,000 ($200,000/$50,000 x $1,000 = $4,000). This means an annual saving of $3,000. After 30 years, assuming no increase in property tax, the landowner would realize a savings of $90,000.

How do I find out more?
Contact your tax advisor or accountant for information on how this law benefits or could benefit you.

Information for Landowners Who Donate a Conservation Easement and Plan to take a Federal Income Tax Deduction

1. The landowner should consult a tax advisor regarding the tax issues associated with the donation of a CE. Most land conservancies are not qualified to give individual tax advice.

2. IRS regulations state that if the value of the donation is more than $5,000, the property must be appraised. The landowner must obtain the appraisal.

3. The appraisal is typically completed after the CE is completed. It must be a qualified appraisal performed by a qualified appraiser. The donor should obtain information on qualified appraisals and qualified appraisers from the IRS and your tax advisor.

4. IRS regulations state the appraisal must be made not earlier than 60 days before the date the landowner donates the CE. Usually, the date that a CE is recorded with the appropriate governmental entity, typically the register of deeds, is the date the CE is donated.

5. IRS regulations state the donor must receive the appraisal before the due date (including extensions) of the tax return on which the landowner first claims a deduction for the CE.

6. The land conservancy must receive a copy of the appraisal to determine if the appraisal for the CE is in accord with the information specified in the *Qualified Appraisal Checklist* of the Land Trust Alliance. If the appraisal raises concerns, the land conservancy will address the concerns. Any

concerns must be resolved before the land conservancy can sign IRS Form 8283.

7. After the appraisal is completed, the landowner and appraiser complete their parts of Form 8283 and then the land conservancy completes its part. IRS Form 8283 must be completed accurately and completely and the information must be supported by the appraisal and not raise significant concerns before the land conservancy can sign.

8. The land conservancy writes a letter to the landowner acknowledging the donation of the CE. The letter is required by the IRS in order for the donation to be valid as a deduction. The letter must be received by the donor before they file their tax return, including extensions, for the year the donation is made, otherwise the IRS may disallow the donation. The letter must be retained by the donor.

The information in this document is intended as general information only, and is not intended as specific individual tax, legal, or financial advice, nor is it to be used for the purpose of avoiding federal taxes or tax penalties. The landowner is highly encouraged to consult a tax advisor for tax advice, and other appropriate advisors.