



# Conservation Easements

## **A Conservation Easement Is...**

A restriction placed on the deed of a portion of property to protect its natural resources in perpetuity. The property owner maintains ownership, but sells or donates the easement rights for that portion of land. It constitutes a legally binding agreement that prohibits certain land uses and types of development from taking place. An easement does not grant ownership nor does it absolve the property owner from traditional responsibilities like tax, upkeep or maintenance. Landowners also retain their right to privacy and are not required to allow public access. Conservation easements are publicly recorded and give the holder, such as FSWCD, the responsibility to monitor and enforce easement restrictions imposed by the easement.

## **Why have a Conservation Easement?**

People have easements because they are interested in preserving the natural features on their land, preventing its development or taking advantage of potential financial benefits realized from granting an easement in perpetuity. These benefits may include some federal income tax abatement as well as local tax benefits. The satisfaction of being able to permanently protect the natural, scenic and cultural values of the land for their descendants and the greater community is often enough to convince a landowner to grant an easement.

## **Easements Require Homework**

Because of the complex and constantly changing laws, there are several items a landowner should look into to make sure there are not any surprises once an easement is obtained. Reading related literature, consulting an attorney knowledgeable about land-use law and specific tax implications, and contacting the Franklin County Auditor's Office to learn about local policies will ensure landowners make informed decisions that are right for them.

## **Resources**

*Coalition of Ohio Land Trusts- [www.ohiolandtrusts.org](http://www.ohiolandtrusts.org)*

Find funding options, frequently asked questions and Ohio-specific information on things like tax policy regarding conservation easements and other land trust options.

*American Farmland Trust- [www.farmland.org](http://www.farmland.org)*

Information on preserving agricultural lands

*Franklin County Auditor 614-525-4663*

Property maps and information regarding local policies concerning easements.

## Common Questions

### *What are my responsibilities as a landowner with an easement?*

You are still the owner of the land, and are responsible for items such as upkeep, maintenance and payment of applicable taxes. You are also responsible for abiding by the easement restrictions.

### *What are the responsibilities of FSWCD?*

FSWCD has the responsibility to enforce the restrictions laid out in the easement. This includes:

- Establishing baseline documentation to ensure that the language of the easement is clear and enforceable.
- Developing and maintaining maps, property descriptions and records of the property's characteristics.
- Monitoring the use of the land once or twice per year. This may include visits to the property to ensure the easement restrictions are being upheld.
- Providing information regarding the easement to new or prospective property owners.
- Establishing a review and approval process for land activities stipulated in the easement deed.
- Enforcing the restrictions of the easement through the legal system if necessary

### *Does the public have the right to access a conservation easement?*

No, the owner of the property reserves the right to privacy and has no obligation to provide access to anyone other than the easement holder as stipulated in the deed. An easement can restrict or permit certain public uses of the land as desired by the landowner and if consistent with the easement requirements.

### *What can and can't I do on an FSWCD easement?*

As a landowner, a person can do anything within the Conservation Easement that complies with the restrictions as stated in the deed. Generally these activities include hiking, camping, wildlife watching and outdoor pursuits, permitted management activities that will improve the natural integrity of the easementsw and any compatible use that may be stipulated as reserved rights for the landowner in the conservation deed.

### *Is there a difference between a deed restriction and a conservation easement?*

Yes. Conservation easements and deed restrictions both place limitations on what can or can't be done on a property and are recorded as part of the deed. However, they differ significantly in their ability to stand the test of timeand effectively protect resources in perpetuity. Deed restrictions are generally enforced by homeowner associations and neighborhood groups and often prove to be unenforceable. Conservation easements on the other hand are held by an independent, qualified entity that is responsible for the protected area and has the means by which to legally challenge a violation to the conservation deed. Additionally, a conservation easement holder has certain rights to the property, including legal duty to monito and ensure the easement is intact, and unlike deed restrictions, the holder has the right to access the property.

### *Should I sell or donate?*

This is where your research, legal consultation and questions to the County Auditor can help you decide what is best for you. You may decide to sell, donate or do a little of both through a bargain sale. It may be that applicable tax benefits would provide higher financial return in the long run, but not the quick cash that an outright sale would provide. Keep in mind that potential tax benefits or payment will vary and is decided on a case by case basis; you most likely will owe some taxes. Any payment received is taxable.



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