

CHHS/FOW CONSERVATION AND PRESERVATION EASEMENT PROGRAM

EASEMENT ACQUISITION POLICY

1. INTRODUCTION

The Chestnut Hill Historical Society (CHHS) and the Friends of the Wissahickon (FOW) maintain a joint Conservation and Preservation Easement Program to limit development on key open tracts of land in the lower Wissahickon watershed and to protect historically and architecturally significant buildings throughout northwest Philadelphia (Chestnut Hill, Mt. Airy, Germantown, and Roxborough) and adjoining areas of Montgomery County.

Because CHHS (the easement holder) bears a significant legal and ethical responsibility to ensure that its easements offer real public benefit and that eased properties can be adequately monitored and easement restrictions permanently enforced, every potential easement is carefully evaluated before it is accepted.

The purpose of this document is to memorialize the Easement Program's policies for evaluating and accepting donations of conservation easements and to guide its easement acquisition practices.

2. STAFF REVIEW OF PROPOSED EASEMENTS; SELECTION CRITERIA

Easements may be pursued by the Easement Manager and/or members of the Easement Committee as part of the strategic plan to preserve high priority properties identified by the FOW Land Conservation and Stewardship Plan or may be offered to the Easement Program by landowners wishing to preserve their property while retaining private ownership. As a first step of the review process, the Easement Manager will conduct a site visit and compile information on each proposed easement to determine whether the land (for conservation easements) or building (for preservation easements) meets the selection criteria described below.

The "conservation purposes" of easements donated to the Easement Program overwhelmingly fall into one of two IRS categories:

Section 170(h)(4)(A)(iii): The easement will result in the preservation of open space (including farmland and forest land) where such preservation (a) will yield a *significant* public benefit and (b) is either (i) for the scenic enjoyment of the general public or (ii) pursuant to a clearly delineated Federal, State or local governmental conservation policy.

Section 170(h)(4)(A)(iv): The preservation of an historically important land area or a certified historic structure.

To determine whether or not a proposed conservation or preservation easement has a

sufficiently strong conservation purpose to warrant acceptance into the Easement Program, the Easement Manager will evaluate the following criteria:

A. Considerations that favor acceptance into the Easement Program:

1. The property is located in Chestnut Hill, Mt. Airy, Germantown, Roxborough, or adjacent areas of Montgomery County.
2. The property is designated “high priority” in the FOW Land Conservation and Stewardship Plan.
3. The property is in a relatively undisturbed natural, scenic or historic condition.
4. The property borders or affects the integrity of the Wissahickon Creek or a tributary thereof; or borders Fairmount Park or a potential park trail corridor.
5. The property provides scenic views from public rights-of-way, watercourses, or Fairmount Park.
6. The property includes specimen trees, wildlife habitat, or other important natural resources.
7. The property is listed in or eligible for listing in the National Register for Historic Places or the Philadelphia City Register of Historic Places (preservation easements only).
8. The property is adjacent to or in close proximity to land that is already permanently protected.
9. The property could be developed or used in a manner that would negatively impact the character of the area.
10. The property is of sufficient size that its conservation values are likely to remain intact, even if adjacent properties are developed.
11. Protection of the property is likely to encourage abutting landowners to protect their properties.

B. Considerations that weigh against acceptance into the Easement Program:

1. There is little public visual access to or across the property.
2. The property is not large enough to be significant for conservation purposes, and/or there is little likelihood of adjacent properties being protected.
3. Adjacent properties are being developed in a way that is likely to significantly diminish the conservation values of the subject property.
4. The landowner insists on retaining reserved rights or uses in the conservation easement that may seriously diminish the property’s primary conservation values.
5. There is reason to believe that the easement would be unusually difficult to administer or enforce (for example, there are multiple or fractured ownerships; existing reserved rights are ambiguous or potentially destructive to conservation values; neighbors have encroached).
6. Investment of staff time and effort is not proportionate to the property’s conservation values.
7. Ethical, legal or public image problems may result from accepting the easement.

8. The project has significant title or environmental problems, or a mortgage subordination will not be able to be obtained from the lender.
9. The landowner is not able or willing to donate adequate funds to the Easement Program stewardship fund, and alternative sources of stewardship funding for the property cannot be identified.
10. Facts exist that call into question the “donative intent” of the landowner (e.g., “quid pro quo” situations).

3. BOARD REVIEW AND APPROVAL PROCESS

If, after review, the Easement Manager recommends accepting donation of a conservation or preservation easement, the Easement Manager will present the project to the Easement Committee, together with a preliminary Easement Project Summary.

If the Easement Manager recommends not accepting donation of an easement, s/he shall notify the Easement Committee of this recommendation at its next meeting.

The Easement Committee shall review the proposed easement and determine whether to give the Easement Manager preliminary approval to proceed with easement negotiations. The Easement Committee chair shall notify the CHHS Board of Directors of the proposed easement project at its next regularly scheduled meeting or via e-mail notification, noting, where appropriate, that the negotiations are confidential.

The Easement Manager will ensure that a comprehensive title investigation is conducted for all easements, and that all mortgages, liens, and other encumbrances that could undermine CHHS's ability to protect the conservation values are either discharged or subordinated to the easements it accepts.

The Easement Manager shall report on easements in progress at regularly scheduled meetings of the Easement Committee. When an easement is fully negotiated and the documentation ready for execution, the Easement Committee chair shall notify the CHHS Board of Directors of the easement at its next regularly scheduled meeting. The Easement Manager shall prepare a final Easement Project Summary for review by the CHHS Board of Directors.

Easement acceptance requires a majority vote of a quorum of the CHHS Board of Directors. The CHHS Executive Committee shall be delegated authority to approve easement acquisitions if time constraints prevent full Board review, with Board ratification required at the next full Board meeting. A record of the approval vote will be included in the Board meeting minutes, a copy of which will be filed in the easement records along with the supporting Easement Project Summary. If any “interested person” recuses him or herself from Board (or Easement Committee) discussions or votes regarding an easement, pursuant to the CHHS Conflict of Interest Policy, the minutes shall reflect this.

4. TAX, APPRAISAL AND LEGAL MATTERS

Potential easement donors shall be notified in writing that they are responsible for determining the value of the easement donation and that they will need to obtain a written qualified appraisal, prepared by a qualified appraiser, if they plan to seek a federal tax deduction. The information provided to the donor shall include information on the timing of the appraisal.

Staff will not make representations about the federal or other tax implication of the proposed donation. In each transaction, the Easement Manager will send landowners a letter advising them to seek their own legal and tax counsel.

Donors will be informed in writing that they will be asked to provide CHHS with an original copy of their completed appraisal report as soon as it is completed, as well as a copy of their completed IRS Form 8283 prior to the time they plan to submit it to the IRS. The CHHS Executive Director will not sign the donee acknowledgement on IRS Form 8283 unless all other sections of the form have been properly completed and signed by the donor and the qualified appraiser. The letter to potential donors also will note that CHHS will not knowingly participate in projects where it has significant reservations about the value of the gift, and that in such cases it may seek additional substantiation of value (at the landowner's expense) or even refuse to sign the Form 8283.

All gift acknowledgement letters provided by CHHS to donors for gifts where Form 8283 has been signed must clearly state that CHHS does not take a position on either the value or the tax deductibility of the gift.

In each transaction CHHS shall be represented by counsel experienced with conservation easements.

5. STEWARDSHIP CONTRIBUTION

The Easement Manager, the CHHS Executive Director, or designated Easement Committee members will request that donors of conservation or preservation easements also make a monetary contribution to the Easement Stewardship Fund, pursuant to the CHHS Easement Stewardship Fund Policy.

Adopted by the CHHS Board of Directors on: January 25, 2010

Revised by the CHHS Board of Directors on: May 23, 2011

For the Board of Directors: Carolyn Adams

Print name: Carolyn Adams, Secretary of the Board of Directors