



PROTECTING
YOUR LAND
with a
CONSERVATION
EASEMENT

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"In the end, our society will be defined not only by what we create, but by what we refuse to destroy."

—JOHN SAWHILL



THE CHHS/FOW EASEMENT PROGRAM

Over a decade ago, the Chestnut Hill Historical Society (CHHS) and the Friends of the Wissahickon (FOW) launched a joint Conservation and Façade 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 Chestnut Hill, Mt. Airy, and adjoining neighborhoods.

The Conservation and Façade Easement Program is responsible for 31 easements protecting 60 acres of open space and 12 historic façades valued at over \$7 million. With the support of the community, local landowners, board members, and donors, the Program is making steady progress toward the goal of preserving the area's significant remaining natural, scenic, and architectural resources.

There are very few places that offer the unique advantage that we residents of the lower Wissahickon Valley enjoy: the conveniences of urban living amid acres of private and public green space. But unprecedented development pressures on the remaining subdividable land in this area are escalating land values and forcing many landowners to make decisions regarding the future of their land that may detract from the area's unique character. Often these decisions are driven by financial needs and estate tax burdens.

Fortunately, conservation easements provide a flexible option for private landowners who wish to preserve the open space or historic character of their properties while meeting their financial objectives.

THE CONSERVATION EASEMENT

What is it?

A conservation easement is a legally **binding agreement that restricts the owner's use of the property** in agreed upon ways.

- Its purpose is to protect the natural, scenic, or historic values of the property.
- The **owner retains full title to the property** and continues to use it, subject only to the specified restrictions.
- He or she retains the right to sell, lease, or bequeath the property.
- The qualified conservation organization or government agency that holds the easement agrees to enforce the restrictions into the future.
- The easement is **granted in perpetuity**, is recorded with the deed to the property, and will apply to all future owners.

Since 1969, the Internal Revenue Code has permitted a **charitable deduction** for qualified conservation easements. IRS regulations issued in 1986 provide guidelines.
(See *Treasury Regulations section 1.170A-14*)

What does it do?

An easement agreement typically:

- **Protects the special features** of the property (such as woods, Wissahickon Creek tributaries, steep slopes, scenic views from public rights-of-way, or historic buildings);
- **Limits the number, type, and location of dwellings and other buildings** on the property.
- **Prevents harmful activities** such as commercial and industrial uses, excavation, and dumping.
- **Limits impervious coverage and the removal of trees and other vegetation.**

What doesn't it do?

An easement agreement typically:

- **Does not permit public access** to the property (unless it is the specific desire of the landowner to allow an accessible area or trail corridor).
- **Does not change ownership of the land.** Property owners continue to use and enjoy the land consistent with the terms of the easement.
- **Does not prohibit all subdivision,** unless this is included in the terms of the easement agreement. Future dwelling sites may be designated depending upon the size of the property and the nature of the resources being protected.



THE BENEFITS

“The world was not left to us by our parents. It was lent to us by our children.”

—AFRICAN PROVERB

To Landowners

- A conservation easement may provide **significant financial benefits** through the reduction of federal income, estate, gift, and property taxes.
- While there are costs associated with donating an easement, a conservation easement may provide landowners immense satisfaction from knowing that the scenic, historic, and natural resources of the property they have lived on and cared for will be protected for the use and enjoyment of future generations.
- Conservation easements provide families with the opportunity to plan together for future use of the land, thereby avoiding possible conflict at a later time.
- Neighboring landowners who donate conservation easements on contiguous properties can provide mutual protection against unplanned development.

Myrna and David Pope donated a conservation easement on their property in Chestnut Hill because they believe that ...

“People need to take action themselves.”

To the Public

- Conservation easements can protect the Wissahickon Valley's important natural and scenic assets without the need for appropriating public funds.
- Lands under conservation easement remain in private ownership and **on the tax rolls** of the community.
- Because conservation easements are granted in perpetuity, our community can depend upon eased lands as **permanently protected open spaces**—a lasting result not possible through zoning or other land use regulations.
- The Conservation and Façade Easement Program jointly sponsored by CHHS and FOW provides landowners a way to protect the Wissahickon Valley's unique landscape for themselves, their neighbors, and for future generations. To date, several dozen property owners in the area have chosen to place their land or house façades under easement.



CASE STUDIES

Chuck Broadbent, who recently placed a conservation easement on his home on Bells Mill Road, wanted to preserve “the wonderful trees and open space in this entry way to the Wissahickon Valley. My wife and I feel very lucky to live there in a 150+ year old house and hope to preserve the environment for future generations.” By limiting future development, this easement will help to ensure that problems caused by storm runoff, flooding, and erosion are minimized. And by protecting the property’s naturally landscaped grounds adjacent to the park, the easement smooths the transition between private and public land, making Fairmount Park’s woodlands appear more extensive than they actually are.



CHHS Archivist **Liz Jarvis** saw firsthand how an historic building could be altered by someone who didn’t understand or didn’t care about the benefits of historic preservation when her parents’ former home in Lancaster was bought by someone “who made very unfortunate and historically inappropriate changes to it and to the land around it.” Liz and her husband chose to donate a façade and conservation easement on their home to make sure that the same thing did not happen in Chestnut Hill. They also appreciated the tax benefits of easement donation, especially considering the costs of maintaining an older home, noting that “a large part of our assets are tied up in the house, and we have no interest in selling it, so donating an easement was a nice way to derive significant tax benefits.”

An easement runs in perpetuity, so all future owners of the property are bound by its terms. When **Courtney Kapp** was recently considering the purchase of a property bordering the Wissahickon that was already under easement, she had some initial concerns. “The real estate world uses the term ‘encumbered’ when a property has an easement, which is a bit of a red flag. Once I got comfortable with the parameters, I knew the easement was protecting just the sort of things I wanted to preserve—open space, trees, and limited impervious coverage.” In the end, she purchased the property and “would advise a friend to give serious consideration to donating an easement in an effort to preserve our community and our natural resources.”

FINANCIAL CONSIDERATIONS

Easements offer landowners an opportunity to **protect their properties and possibly gain significant financial benefits without selling their land.**

Federal Income Tax Benefits

Donation of an easement may be treated as a **charitable contribution** on the landowner’s federal income tax return. The value of the donation is determined by a **qualified appraisal** and is equal to the difference between the fair market value of the property **before** donation of the easement and the fair market value of the property **after** the donation.

Assume, for example, that the owners of an unrestricted property worth \$1,200,000 place an easement on the property that preserves the woods, prohibits subdivision, and restricts most impervious surfaces except for the possible future addition of a tennis court and swimming pool. A qualified appraiser then determines that the property’s fair market value as encumbered by the easement would be worth \$900,000. In this case the charitable donation would be valued at \$300,000. The potential tax savings would be:

Donation x Tax Rate = Approximate Tax Savings

If the donor in the example above is in the 33% tax bracket, the calculation would be:

\$300,000 x 33% = \$100,000 (Approximate Tax Savings)

While virtually all conservation easements reduce property values, reductions can range in value from less than 10% to more than 90% of the fair market value. The reduction tends to be greatest where a highly restrictive easement is placed on prime development land in an area experiencing intense growth, such as northwest Philadelphia and its surrounding areas.

Tax law caps the maximum annual charitable deduction a donor can take.

For a gift of appreciated property (which includes most gifts of land and conservation easements), the amount that is deductible in the year of the donation is limited to a set percentage of adjusted gross income (“AGI”). Until 2006, the cap on donations was 30% of a donor’s AGI, with the excess value of the gift able to be deducted for up to five additional years, applying the 30% of AGI limit each year.

However, easement donations completed in 2007 were increased to 50% of AGI, and the carry-forward period was increased for up to 15 additional years. (See example on next page and sidebar for more information)

The Pension Protection Act of 2006 includes new tax incentives for the donation of conservation easements.

The law:

- Raises the deduction that a landowner may take for donating an easement from 30% of their AGI in any year to 50%.
- Extends the carry-forward period for a donor to use up his or her tax deductions from 5 to 15 years.

These enhanced tax benefits may expire in December 2007, when the regulations will revert to their former provisions. While conservation organizations are working to convince Congress to make these changes to the tax code permanent, there is no guarantee that these tax benefits will be available in 2008 or beyond. If you are considering the donation of an easement, 2007 may be the year to do it.

Example

Assume the value of an easement placed on property in 2005 was \$300,000. If the family's adjusted gross income were \$175,000, they would have been allowed to deduct \$52,500 (30% of the \$175,000 AGI = \$52,500) from their federal income taxes each year in years 1 through 5 (totaling \$262,500) and to deduct the balance of \$37,500 in the sixth year.

If the same easement were donated in 2007, because of the enhanced tax provisions the family would be able to **accelerate the transaction** by deducting \$87,500 (50% of the \$175,000 AGI) each year for three years (totaling \$262,500) and to complete the transaction in year 4 with a \$37,500 deduction.

Donating an Easement by Will

A conservation easement also can be granted by will. With this option, estate taxes will be reduced but there is no income tax benefit. If a landowner intends to donate an easement by will, the easement's terms first must be negotiated with the intended holder. The proposed easement may be added as a codicil to a will, with specific instructions to the executor to enter into the easement upon the landowner's death. The will can be amended later if family or financial circumstances change or if the landowner decides to grant the easement during his or her lifetime.

Easements are extremely flexible land-saving tools.



Property Tax Benefits

If easement restrictions affect the overall value of the property, in theory the easement will lower the property tax rate. However, the re-assessment is not done automatically in Pennsylvania: the burden is on the landowner to present his or her case for a lower property tax rate before the Board of Revision of Taxes (or other assessment body outside of Philadelphia).

Landowners considering the donation of a conservation easement should consult their personal advisors regarding all legal and tax implications.

Federal Estate Tax Benefits

When landowners die and leave their property to their children, the heirs may find that the property has appreciated dramatically since it was purchased. This may make it difficult to pay inheritance and estate taxes, forcing a sale of the land to pay the taxes.

Because conservation easements reduce the appraised fair market value of land, an easement donated by a landowner prior to death (or donated by will) serves to reduce the total value of the estate, which in turn reduces estate taxes.

A landowner's estate is **additionally entitled to exclude from taxation a portion of the net assets amounting to a percentage of the value of the conservation easement. The maximum exclusion is \$500,000.** The qualification for and calculation of this exclusion is dependent upon a number of considerations which should be carefully reviewed by the landowner and his or her advisors.

The "Conservation Purposes" Test

The value of an easement may be deductible for federal income tax purposes if the easement is donated to a qualified organization and meets **at least one** of the following "conservation purposes":

- The preservation of land areas for recreation by, or the education of, the general public.
- The protection of a relatively natural habitat of fish, wildlife, or plants, and similar ecosystems.
- The **preservation of open space**, including woodland and farmland, for either the scenic enjoyment of the general public or when such preservation is pursuant to a clearly delineated governmental conservation policy. In either case, a significant public benefit must result from the preservation of such open space.
- The preservation of an historically important land area or certified historic structure.

Most conservation easements donated under the CHHS/FOW Easement Program have met the "preservation of open space" test. Façade easements also have been donated on historic structures.

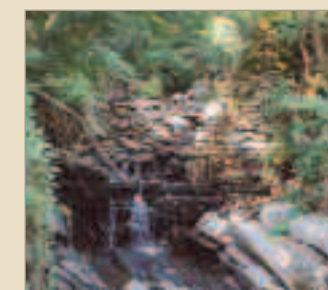
Perpetuity of the Easement

In addition to serving at least one of the four conservation purposes, the IRS requires that an easement be **granted in perpetuity** and be donated to a **qualified recipient** organization. This organization must hold the easement solely for conservation purposes and be able to enforce the easement. The holder should inspect the easement at least once a year and be prepared to take legal action, if necessary, to uphold the terms of the easement. (Although CHHS and FOW are both sponsors of the program, CHHS will be the ultimate easement holder and be legally responsible for monitoring the easement in perpetuity.)

DID YOU KNOW:

The single most destructive force on the Wissahickon Valley is stormwater runoff from private lands in the Wissahickon watershed. Rampant development and the accompanying increase in impervious (paved and roofed) surfaces have resulted in a greater amount of stormwater flow directly into the Wissahickon Creek, leading to serious erosion, pollution, and stream siltation problems.

A buffer of protected private lands is of vital importance in protecting the Wissahickon Valley from destructive stormwater runoff and in maintaining the Wissahickon's wild and scenic woodland character.



THE PLANNING PROCESS

The most important part of the easement process is for CHHS/FOW Easement Program staff to **understand the landowner's needs and desires in planning for the future of the property.** Staff will work closely with the landowner to design a conservation plan that will preserve the natural and historic characteristics of the property, meet the landowner's specific financial objectives, and further the conservation goals of the CHHS/FOW Easement Program.

The process for planning a conservation easement includes the following steps:

1. Define the Landowner's Objectives

Easement Program staff meet with the landowner to discuss his or her objectives for the future preservation of the property and to understand the landowner's financial and tax planning considerations. These discussions are treated as private and confidential. At the meeting, staff will walk the property and evaluate its natural, historic, and scenic resources.

2. Submit a Project Proposal and Cost Estimate

After the meeting, staff will send the landowner a detailed proposal and cost estimate for placing an easement on the property. (See *Estimating the Costs*)

3. Gather Baseline Property Documentation

A baseline report on the property will be assembled to document its physical condition and natural resource/historic value. This documentation forms the basis for future monitoring of easement conditions and includes:

a property base map; a natural features map; a historic structures description (if appropriate); on-site photography; an aerial photograph (obtained from existing sources); and a summary report including evidence of the property's "conservation purposes," intended to meet IRS requirements for easement donations.

4. Prepare a Conservation Map; Obtain an Appraisal

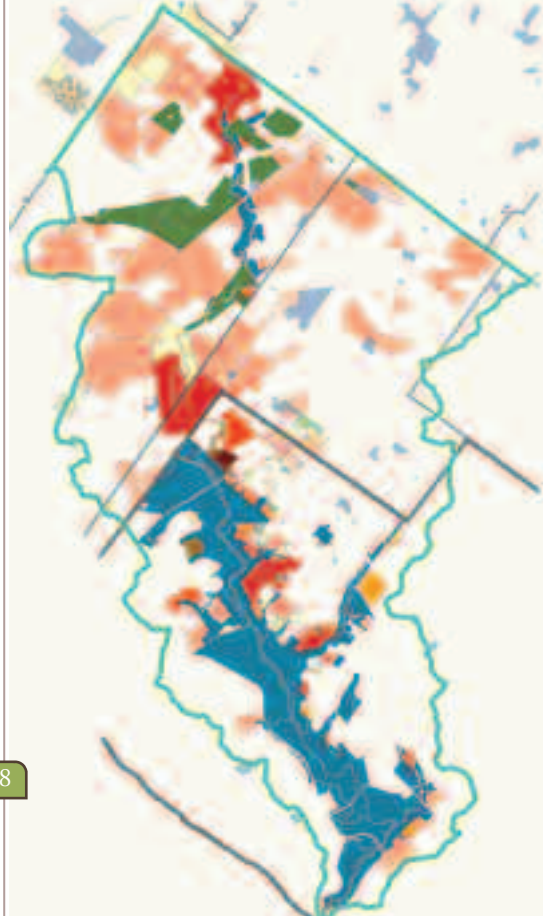
Easement Program staff will prepare a conservation map showing major features of the property, indicating the different protection areas, and mapping any current or future building areas. This map becomes the basis for drafting the conservation easement agreement. The landowner will want to have a "qualified appraisal" prepared by this point.

5. Draft the Conservation Easement Agreement

Easement Program staff and counsel will draft an easement agreement that spells out the specific rights and restrictions to which a landowner and CHHS/FOW agree and submit this for review by the landowner and his or her attorney. If there is an existing mortgage on the property, the landowner must obtain the joinder and consent (subordination) of the mortgagee to the conservation easement.

6. Sign and Record the Final Easement Agreement

The easement must be approved by the CHHS Board of Directors and signed by the landowner and the CHHS Board president. The easement agreement then is notarized and recorded with the deed to the property, with copies of the documents delivered to the landowner for safekeeping.



HIGHEST PRIORITY PARCELS
in the lower Wissahickon Watershed

ESTIMATING THE COSTS

Donating an Easement

CHHS and FOW are member-supported, 501(c)(3) nonprofit historic preservation and conservation organizations with limited endowment funds to cover their operating costs. In order to continue our work, we ask property owners to reimburse our costs to prepare easement documentation and to make a contribution to the Easement Stewardship Fund to ensure that we are financially able to monitor and enforce the easements we hold **in perpetuity.**

Remember: *The Easement Stewardship Fund contribution and most of the costs of preparing the easement are deductible for income tax purposes.*

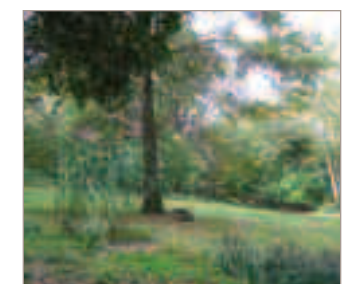
Prior to the start of a conservation project, the landowner receives a project proposal which includes:

- **Staffing and other estimated costs** for documenting the resource values of the property, preparing the conservation plan, and drafting the easement agreement.
- **Legal costs** for the Easement Program's attorney to review the easement agreement.
- **An estimate of the Stewardship Fund contribution** needed to cover the long-term administrative, monitoring, and enforcement costs for the easement. Income from the Stewardship Fund is used to pay for the annual monitoring of the property. Generally, the amount requested is 3% of the amount of a conservation easement donation and 7% of the value of a façade easement donation, but this varies based upon the size of the property, the complexity of the easement, and the amount of staff time which will be required on an annual basis to administer and monitor the easement.
- Typically, the charitable contribution to which the property owner is entitled more than compensates for these out-of-pocket costs. However, when this is not true, and especially when the land or structures on which the easement is to be placed offer exceptional environmental or historic values, we will consider accepting a lower level of owner contribution.

Landowners should anticipate incurring other costs not included in the proposal, such as:

- **Appraisal fees.** A "qualified appraisal" of the easement's fair market value is necessary for the landowner to obtain a tax deduction. Although landowners are responsible for hiring their own "qualified appraisers," we can supply a list of appraisers experienced in valuing conservation easements. Easement Program staff will need to review a copy of the appraisal prior to signing the landowner's IRS FORM 8283 (the tax form required to substantiate the donation).
- Fees for the landowner's own tax and legal advisors.
- Survey costs, if a survey is necessary.

If you are interested in learning more about easements and how you can help to preserve the unique character of the Wissahickon Valley by placing an easement on your home or land, please call us at 215-247-0417.



MISSION

The Chestnut Hill Historical Society is dedicated to preserving and nurturing the historical, physical, and cultural resources and the character of Chestnut Hill.

The mission of the **Friends of the Wissahickon** is to preserve the natural beauty and wildness of the Wissahickon Valley and stimulate public interest therein.

Ask CHHS or FOW to help outline ways you can voluntarily preserve your land while protecting your family's financial security.

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The Chestnut Hill Historical Society
8708 Germantown Avenue
Philadelphia, PA 19118
215-247-0417
www.chhist.org

Friends of the Wissahickon
8708 Germantown Avenue
Philadelphia, PA 19118
215-247-0417
www.fow.org