

PROTECT THE PLACE YOU LOVE

HOW TO
CONSERVE &
PRESERVE YOUR
PROPERTY WITH
AN EASEMENT



Photo Credit: CH Conservancy

CONTENTS

The Easement 2

What is it?
What does it do?
What doesn't it do?

The Benefits3

What do you get?
What does the community get?

Speaking for Easements.....4

Financial Considerations..... 6

Federal Income Tax Benefits
Federal Estate Tax Benefits
Donating an Easement by Will
Property Tax Benefits

Is Your Property Eligible?.....7

The “Conservation Purposes” Test
Perpetuity of the Easement

We Are by Your Side.....8

The Six Steps

Estimating the Costs.....9

Donating an Easement

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

-John Sawhill, Former CEO of
The Nature Conservancy

THE CHESTNUT HILL CONSERVANCY AND FRIENDS OF THE WISSAHICKON EASEMENTS PROGRAM

Over two decades ago, the Chestnut Hill Conservancy (CH Conservancy), in partnership with Friends of the Wissahickon (FOW), launched a joint Conservation and Preservation Easements Program. The Wissahickon Valley relies on a network of contiguous public and private open space for its protection. This program endeavors to limit development on key open tracts of land in the lower Wissahickon watershed in order to reduce the destructive effects of stormwater runoff and to protect historically and architecturally significant buildings throughout Chestnut Hill, Mt. Airy, and adjoining neighborhoods. CH Conservancy has the distinction of being the first urban-focused land trust accredited by the Land Trust Accreditation Commission.

The Conservation and Preservation Easements Program is responsible for **47 easements** protecting more than **100 acres** of open space and **18 historic façades**. With the support of the community, local property owners, 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 development pressures on the remaining subdividable land in this area are escalating land values and forcing many property owners to make decisions regarding the future of their land that may diminish environmental health and detract from the area's unique character. Often these decisions are driven by financial needs and estate tax burdens.

Fortunately, conservation and preservation easements provide a flexible option for private property owners who wish to preserve the open space or historic character of their properties while meeting their financial objectives. A property can have a conservation easement, a preservation easement, or a combined conservation and preservation easement. For our purposes, conservation easements are used primarily to conserve open space and natural resources. We use preservation easements to protect historically significant structures.

THE EASEMENT

What is it?

An easement is a legal agreement between a qualified nonprofit organization and a property owner 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 mutually agreed-upon restrictions.
- He or she retains the right to sell, lease, or bequeath the property.
- CH Conservancy, a qualified non-profit and an accredited land trust, 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 easements.

(See treasury regulations section 1.170A-14)



2

Photo Credit: Wendy Concannon

What does it do?

An easement agreement typically:

- Protects the special features of the property (such as Wissahickon Creek tributaries, scenic views from public rights-of-way, or historic buildings).
- Limits development on the property by restricting the number, type, and location of dwellings and other structures that can be built.
- Prevents harmful activities such as commercial and industrial uses, excavation, and dumping.
- Limits impervious coverage and the removal of trees and other vegetation.
- Ensures exterior alterations remain historic in character.
- Mitigates stormwater runoff and wastewater by limiting development and conserving vegetative buffers.

What doesn't it do?

An easement agreement typically:

- Does not change ownership. Property owners continue to use and enjoy the land and structures consistent with the terms of the easement.
- Does not need to permit public access to the property (unless it is the specific desire of the property owner to allow an accessible area or trail corridor).
- Does not prohibit all subdivision, unless it 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.

What does it look like?

Each easement is drafted to reflect the goals of the property owner. In discussions with the owners and legal counsel, we determine what protections will be placed on the property. We use the Model Grant of Conservation Easement drafted for the Pennsylvania Land Trust Association as our starting point for conservation easements. For preservation easements we use the Model Historic Preservation and Conservation Easement drafted for the National Trust for Historic Preservation.

THE BENEFITS

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

-Proverb

What do you get?

- An easement may provide significant financial benefits through the reduction of federal income, estate, gift, and property taxes.
- Easements provide families with the opportunity to plan together for future use of the land, thereby avoiding possible conflict at a later time.
- Neighboring property owners who donate easements on contiguous properties can provide mutual protection against unplanned development.
- While there are costs associated with donating an easement, it may provide property owners 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.



Myrna and David Pope donated a conservation easement on their property in Chestnut Hill because they believe that, “People need to take action themselves.”

What does the community get?

- Easements limit development in the lower Wissahickon watershed in order to reduce the destructive effects of stormwater runoff on the Wissahickon Creek and Valley.
- Easements can protect the Wissahickon Creek and Valley’s important natural and scenic assets without the need for appropriating public funds.
- Properties under easement remain in private ownership and on the tax rolls of the community.
- Because easements are granted in perpetuity, our community can depend upon eased properties as permanently protected places. This is a lasting result that is not possible through zoning or other land regulations.
- The Conservation and Preservation Easement Program of the CH Conservancy in partnership with FOW provides property owners with a way to protect the Wissahickon Valley’s unique landscape for themselves, their neighbors, and for future generations.

3

SPEAKING FOR EASEMENTS

Richard “Rick” Cantor and his wife Joan love their home. They love it for its architectural style and grace, but also its character and warmth. From the moment they purchased the property, they wished its beauty and integrity could somehow be preserved forever. By placing a conservation easement on the 3.69-acre property, their wish came true.

Situated close to both Wissahickon Valley Park and Carpenter’s Woods, the Cantors’ property is one of several beautiful parcels of land, but it is unique in Rick’s eyes. Set far back from the street, the Cantors’ 1911 home, designed by Charles Barton Keen, feels like its own lovely, somewhat secluded world. In addition to the historic Georgian house, the property features large specimen trees, a wide variety of plants, a family of red foxes, deer, raccoons, and the occasional coyote.

Rick remembers how sad he was when Whitemarsh Hall, a splendid childhood playground of his and an historic estate in Wyndmoor, was torn down. Once

he heard about placing a conservation easement on his property from a neighbor, Rick knew it was the right thing to do. He and Joan now have peace of mind, knowing that the place that is so special to them will still be here, undisturbed, for generations to come.

An easement runs in perpetuity, so all future owners of the property are bound by its terms.

When **Courtney Kapp** was 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.”



Liz and Andy Jarvis gardening their eased property.

CH Conservancy Curator **Liz Jarvis** saw firsthand how an historic building could be altered by someone who did not understand or did not care about the benefits of historic preservation when her parents’ former home in Lancaster was bought by someone “who made historically inappropriate changes to it and to the land around it.” Liz and her husband chose to donate a preservation 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 an easement donation, especially considering the costs of maintaining an older home, noting that “donating an easement was a nice way to derive significant tax benefits.”

Chris Bentley was raised on a farm. From a young age, his parents taught Chris to respect and appreciate the land. Eventually, his parents had to subdivide the farm, but they made sure to put restrictive covenants on certain sections. So it is no surprise that this son of conservation-minded people decided to conserve his own property. Chris understands that, in the city, even the smallest parcel of open space is viewed as a prime development opportunity.

No sooner had they settled onto the 4.2-acre property than a friend suggested placing a conservation easement on the land. Chris and Wendy knew they wanted to protect the property, so they decided to move forward. Creating an easement was a definitive step in eliminating the possibility of future development of their property, whose steep slopes provide an important vegetative buffer to the Wissahickon Valley and mitigate stormwater runoff. Throughout the easement development process they discovered fascinating information about their property, as well as the numerous easement options available to them. They now cherish the satisfaction of knowing that they saved what they call “a corner of heaven,” for posterity’s sake.

Constructed in 1854, this wonderful Italianate-style Victorian house is attributed to **Samuel Sloan**, a highly influential architect of the mid-19th century. The Chestnut Hill Conservancy holds an easement on its facade as well as a conservation easement on the property’s land.

FINANCIAL CONSIDERATIONS

Easements offer property owners an opportunity to protect their properties, and possibly gain significant financial benefits, without selling their property.

Federal Income Tax Benefits

Donation of an easement may be treated as a charitable contribution for federal income tax purposes. 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.

Federal Estate Tax Benefits

When property owners 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 easements reduce the appraised fair market value of property, an easement donated by a property owner prior to death (or donated by will) serves to reduce the total value of the estate, which in turn reduces estate taxes.

A property owner's estate can also exclude up to 40% of the value of the land (but not improvements) under easement from Federal estate tax, whether donated before or after death. The exclusion is capped at \$500,000 and that number is adjusted downwards if the easement reduced the land's value by less than 30% at the time the easement was donated. Qualification for the exclusion and its calculation are dependent upon a number of considerations and limitations, which warrant careful review by the property owner (or his or her estate) with appropriate professional advice.



Photo Credit: Wendy Concannon

Donating an Easement by Will

An easement also can be granted by will. With this option, estate taxes will be reduced but there is no income tax benefit. If a property owner 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 property owner's death. The will can be amended later if family or financial circumstances change or if the property owner decides to grant the easement during his or her lifetime.

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 property owner 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).

Property owners considering the donation of an easement should consult their personal advisors regarding all legal and tax implications.

IS YOUR PROPERTY ELIGIBLE?

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, such as the CH Conservancy, 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, or 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.

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.

Perpetuity of the Easement

In addition to serving at least one of the four conservation purposes stated above, 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 CH Conservancy and FOW are both partners of the program, CH Conservancy, as an accredited land trust, will be the easement holder and be legally responsible for monitoring the easement in perpetuity.



Photo Credit: Charles Uniatowski, Courtesy of Friends of the Wissahickon

WE ARE BY YOUR SIDE

The most important part of the easement process is for CH Conservancy staff to understand the property owner's needs and desires in planning for the future of the property. Staff will work closely with the property owner to design a conservation and/or preservation plan that will preserve the natural and/or historic characteristics of the property, meet the property owner's specific financial objectives, and further the conservation goals of the CH Conservancy/FOW Easement Program. The process for planning an easement includes the following steps:



1. Defining Your Objectives

Easement Program staff meet with the property owner to discuss his or her objectives for the future preservation of the property and to understand the property owner'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. Creating a Project Proposal and Cost Estimate

After the meeting, staff will send the property owner a detailed proposal and cost estimate for placing an easement on the property (see Estimating the Costs, p. 9).

3. Gathering Baseline Property Documentation

CH Conservancy staff will prepare a baseline report on the property that documents 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. Preparing a Conservation/Site Plan and Obtaining an Appraisal

Easement Program staff will prepare a conservation/site plan showing major features of the property, indicating the different protection areas, and mapping any current or future building areas. This plan becomes the basis for drafting the easement agreement. If the property owner is planning to take a federal income tax deduction, he or she will need to obtain a qualified appraisal as defined by the internal revenue code.

5. Drafting the Easement Agreement

CH Conservancy staff and its legal counsel will draft an easement agreement that spells out the specific rights and restrictions to which a property owner and CH Conservancy agree and submit this for review by the property owner and his or her attorney. If there is an existing mortgage on the property, the property owner must obtain the joinder and consent (subordination) of the mortgagee to the easement.

6. Finalizing the Easement Agreement

The easement must be approved by the CH Conservancy Board of Directors and signed by the property owner and a member of the CH Conservancy Board or staff. The easement agreement is then notarized and recorded with the deed to the property, with copies of the documents delivered to the property owner for safekeeping.

ESTIMATING THE COSTS

CH Conservancy and FOW are member-supported, 501(c)(3) nonprofit, historic preservation and conservation organizations with limited endowment funds to cover their operating costs. Our initial visit to see the property and discuss a conservation and/or preservation easement is free of charge. In order to continue our work, though, 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.

CH Conservancy recommends that potential easement donors consult with their own legal, financial, and land-use advisors to determine whether an easement donation would be feasible.

Prior to the start of drafting a conservation and/or preservation easement, the property owner 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 of the easement. Income from the 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 preservation 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.

Property owners 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 property owner to obtain a tax deduction. Although property owners are responsible for hiring their own qualified appraisers, we can supply a list of appraisers experienced in valuing easements. Easement Program staff will need to review a copy of the appraisal prior to signing the property owner's IRS Form 8283 (the tax form required to substantiate the donation).
- Fees for the property owner's own tax and legal advisors.
- Cost for preparing a survey or lot yield plan, when 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 the CH Conservancy at 215-247-9329 x203.

Grant Funds May Be Available

Depending on State funding, some donor costs may be reimbursed through a Pennsylvania Land Trust Association grant program. These generous grants are made possible through the Department of Conservation and Natural Resources.



MISSION

The Chestnut Hill Conservancy is dedicated to preserving the historical, architectural, and cultural resources and the open spaces that define the character of Chestnut Hill and its environs.

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

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

Acknowledgements:

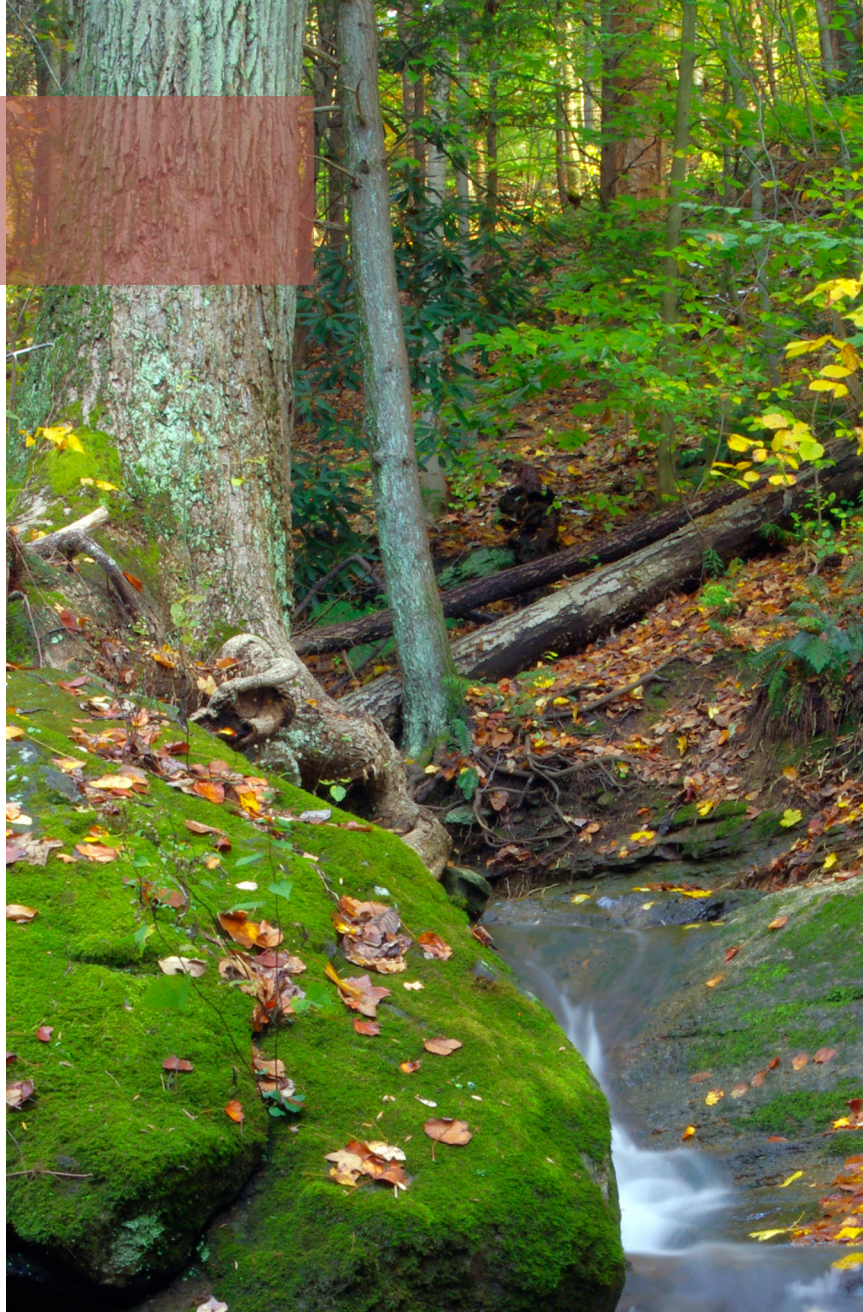
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Chestnut Hill Conservancy is an accredited land trust. The accreditation seal recognizes land conservation organizations that meet national standards for excellence, uphold the public trust, and ensure that conservation efforts are permanent.

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