

Conservation Easements

Protecting Land with Your Vision While It Remains in Private Ownership



Photo Courtesy of The Nature Conservancy/Christine Hall

Grand Marais, Michigan – When the Smiths retired from banking and teaching jobs in southern Michigan, they were drawn to the beauty and nature of the Grand Marais area in the Upper Peninsula. They purchased a long narrow property with a small vacation cottage. The property dropped off a steep bluff and included a wetland, large, active dunes and Lake Superior beach.

The Smiths soon became involved as volunteers in monitoring the nests and young of piping plovers, a federally endangered bird that nests in gravelly beaches around the Great Lakes, including Grand Marais. The nests and young are vulnerable to ATVs and predators such as dogs, ravens and sea gulls. Volunteers monitor nests throughout the nesting season, keeping predators and human disturbance away. The Smiths became quite dedicated to monitoring the plover and helped many young birds go from hatching to fledging, eventually flying south with their parents at the end of the season.

“The Smith’s land is private property without public access. They can still have a lawn and garden, and they can still do improvements to their home and garage.”

Soon, however, the Smiths began to notice homes being built in the natural dunes where the plover were nesting. These homes were far away from the bluff where most of the homes had traditionally been built in the area. The Smiths wished there was a way they could make sure a future homeowner of their land – including their children – would not be tempted to build out in the dunes, thus destroying the natural beach habitat. The Smiths found that by using a land trust tool called a Conservation Easement, they could do just that. They set a vision for their property that would create a permanent legacy.

Conservation easements are one of the most powerful, effective tools available for the conservation of private lands. Their use has successfully protected millions of acres of wildlife habitat and open space in the United States and other countries, while allowing the landowners to continue owning and using the property. The laws of property ownership in the US allow landowners to exercise numerous rights such as cutting timber, subdividing the property and building homes. By selling or donating a conservation easement to a land trust, a landowner voluntarily agrees to relinquish certain rights associated with his or her property ownership. In this way, a conservation easement legally restricts uses of the land in order to protect its ecology and other conservation values.



Home built on the dunes, harming plover habitats.
Photo Courtesy The Nature Conservancy/Christine Hall

Conserve Private Lands in Perpetuity

Every conservation easement is made *custom* – specifically tailored to the particular land being protected as well as to the unique circumstances of the landowners. In the Smith’s case, they wanted specific protections on the dunes, so they created an easement that only allows structures on the bluff area of their property and prohibits any future buildings on the dunes.

A qualified nonprofit organization or government agency holds and enforces conservation easements, which are detailed legal documents filed and recorded in the public deed of record. Conservation easements are permanent agreements that remain with the land; restrictions placed on a property will apply to all current and future owners of the land.

Properties can be bought and sold with conservation easements on them. The Smiths recommend that landowners consider all the factors if they are interested in a conservation easement.

A conservation easement can include almost any kind of restriction agreed to by the landowner and the easement holder. For example, it can specify that the land must be left completely in its natural state. In other cases, the easement may restrict subdivision or development of the land but allow activities such as forest or grazing management. Even construction of new buildings can be allowed in non-sensitive areas, known as a building envelope, provided future owners do not destroy the ecological value of the land or conflict with the conservation purpose of the easement. The easement can be applied to the landowner’s entire property or to only a portion of it, such as the land along the shore of a lake or stream. The terms of the easement are drawn up by the landowner and are precise and detailed.

The landowner retains all property rights except the ones specifically relinquished or restricted by the conservation easement. The landowner still owns the land and can use it in any way consistent with the restrictions. For example, the Smith’s land is still private property without public access. The Smiths can still have a lawn and garden, and they can still do improvements to their home and garage.

The condition of the property at the time the easement is granted must be documented in a report using maps, photographs and biological inventories. This documentation provides a “baseline” of the condition of the property and can help avoid future disagreements or uncertainties that may arise, particularly after the land changes ownership.

What Rights Does the Holder of the Conservation Easement Have?

The conservation easement holder, a qualified nonprofit organization or government agency, has the right to enforce the terms of the easement. In addition, the easement holder has a limited right of access for inspection to ensure compliance with the restrictions. Usually, the inspection is once a year and is arranged between the

landowner and easement holder in a mutually agreeable time. The holder may also have a right of access for scientific data collection or other purposes such as habitat restoration, if agreed to by the landowner.

A conservation easement is a legal agreement between the landowner and the easement holder. The effectiveness, consequences and legality of a conservation easement are governed primarily by the laws of the state in which the land is located. The Smiths note that conservation easements are not easily amended or terminated, and most held by land trusts are perpetual, meaning that current and all future landowners are bound to the easements' restrictions. It is important that the landowner carefully consider their long-term goals and vision for the property. For the Smiths, knowing their dunes and wild beach will never be developed and that plover will have good nesting places on their land gave them the long term habitat protection that they desired.

For More Information about Conservation Easements:

Conservation easements can have positive local and federal income tax benefits for the landowner. However, each local assessor may interpret an easement differently and specific documentation is needed for IRS recognition of an easement at the federal level. It is important that a landowner work with the local land trust on all details. The landowner may want to involve their own legal counsel or estate planning advisors in these matters.

<http://www.nature.org/about-us/private-lands-conservation/conservation-easements/>