



The Conservation Easement Process

A Guide for Landowners

HeadWaters Land Conservancy is able to preserve some of the most beautiful and ecologically important natural lands in northeast Michigan by developing conservation agreements, called Conservation Easements, with private landowners. A conservation easement is a voluntary act by a landowner to impose permanent restrictions on his or her land for its preservation. Contrary to the connotation of the name, a conservation easement does not imply public access. The land remains completely private, but a third party like HeadWaters is charged with the duty of upholding the voluntary restrictions. Restrictions are personalized to the land and the owner. Each Conservation Easement is different, just as parcels of land and their special values are different.

The following information provides a general outline of the Conservation Easement process. The time it takes to complete each step is contingent upon how long it takes a landowner to make decisions, provide information, and approve documents, as well as staff and volunteer availability; general estimates have been provided.

Initial Contact *1 day*

During the initial contact, HeadWaters staff will try to learn about some features of the property and the landowner's objectives. The first contact can occur by means of a telephone call, an office visit, or a property visit. During the initial contact period, HeadWaters and the landowner discuss the following:

- The project selection criteria and conservation values policies.
- The outline of the conservation easement process.
- The responsibilities of each party.
- The significance and permanence of a conservation easement.
- That the landowner should contact their financial advisor for specific tax implications.

Initial Site Visit and Project Selection Evaluation *1-2 weeks*

The proposed easement property will be thoroughly inspected by HeadWaters staff, a board member, or a member of its Land Committee to identify and document all conservation values. In addition, the current condition and any associated risks or concerns regarding the property will be recorded for review by the Land Committee to help decide if the project will be approved.

Authorization *1 month, or when Board meets*

The Land Committee evaluates the potential easement donation. If the property satisfies the criteria for a conservation easement project, the Board of Directors will approve the project and proceed with the following process:

- Create a "Draft Easement" with the landowner.
- Initiate the "Baseline Report" of the property.



Draft Easement *1-2 months*

The 'Draft Easement' is developed collaboratively by HeadWaters and the donor based on the 'Michigan Model Conservation Easement', a template developed by the Heart of the Lakes Center for Conservation Policy. The document will reflect:

- Needs and desires of the donor, to the extent that they do not impair the important conservation values.
- Aspects and features of the property to be protected, including the conservation values and the public benefits. It is HeadWaters Land Conservancy policy that each easement complies with the requirements of the Internal Revenue Service for a qualified conservation contribution.
- Descriptions of monitoring and enforcement procedures.
- Legal obligations of both parties.
- Enforcement and remediation provisions.

Baseline Report *1 month, season dependent*

The purpose of the "Baseline Report" is to completely assess and document the current condition of the property including its boundaries, existing infrastructure, uses, and resources. Using text, maps, photographs and other attachments, this detailed document defines the present condition of the property and the conservation values that are protected by the conservation easement.

The Baseline Report includes:

- The public benefit of acquiring the Conservation Easement.
- Identification, documentation, and condition of the significant natural features of the property being protected.
- Assessment of any future management needs.
- Identification and documentation of any reserved rights or special areas, such as a building envelope or a discrete area of endangered species habitat.
- Identification and location of existing infrastructure such as buildings, roads, utility or pipeline corridors, sand or gravel pits, etc.

Title Search *1 week*

The landowner is responsible for the costs associated with a title search. The purpose of the "title search" is to:

- Verify the legal property description.
- Identify encumbrances on the property such as underlying mortgages, leases, and ownership structure. The prospective donor can assist HeadWaters by providing copies of existing title insurance policies and/or title reports.

Appraisal for Conservation Easements that Qualify for a Tax Deduction *1 month*

All landowners who intend on taking a tax deduction, based on their donation of a qualified conservation easement, must utilize a qualified appraiser (USPAP). The landowner is responsible for all costs associated with the appraisal. Internal Revenue Service regulations penalize donors and appraisers for the over-valuation of gifts. The donor must attach a copy of



the appraisal (signed and dated by a qualified appraiser) to his/her tax return. The landowner shall be provided a copy of HWLC policy "10B – Appraisals".

Final Easement

Legal Review and Board Approval

Legal Review: 2 weeks; Board Approval: 1 month, or when Board meets

The "Final Easement" will be legally reviewed by a qualified attorney, and then approved by the Board of Directors before it is signed by the Executive Director and the landowner. Once the easement is signed by both parties, HeadWaters will have assumed the legal obligation to ensure that its terms are maintained in perpetuity. A copy of the recorded conservation easement with all supporting documents will be sent to the landowner.

Initial Cost and Stewardship Donation

While HeadWaters does not charge a fee to landowners, organizational policy requires that funding be secured for each project. The landowner is typically asked to pay for the initial costs of developing the conservation easement and to contribute to the fund for its long-term stewardship. The cost of creating the agreement, monitoring the land annually, and defending the easement in perpetuity is calculated using a cost estimator that is provided to the landowner.

Initial costs include:

- All title investigation.
- Survey, if necessary.
- Appraisal for tax purposes if taking a charitable deduction.
- Recording fees.
- Staff time and office resources.

After the Conservation Easement is Recorded

Once the conservation easement is recorded, HeadWaters will continue to assist the landowner with any remaining work including:

- Signing IRS form 8283 and providing the contemporaneous letter.
- Assisting with stewardship efforts for continuing land protection.

Annual Monitoring

Annual monitoring is required to satisfy Internal Revenue Service requirements for tax-deductible conservation easements. Each monitoring visit will include an inspection of the property, checking all areas of special concern and reserved rights, and a meeting with the landowner to discuss potential changes of ownership, property changes observed, and/or future plans.