

Frequently Asked Questions About Conservation Easements in Herring Bay

What is a conservation easement?

A conservation easement is a binding legal agreement that protects land in perpetuity. Property owners use these contracts to limit the type and/or amount of future development on all or part of their property. Easements are donated by the property owner to governmental or private land trusts, which monitor the easement for compliance with the negotiated terms. Once recorded, the terms of an easement cannot be changed in ways that would weaken or reduce the conservation measures in the original easement.

How can conservation easements help protect Herring Bay?

As of 2010, two properties in Herring Bay were protected by conservation easements—the 313-acre Old Colony Cove Farm (OCCF, which is under easements adopted in 2004 by Virginia Quigley and in 2010 by the Nature Conservancy), and the 255-acre Holly Hill farm (under an easement adopted in 2008 by Brice Clagett). Having conservation easements on these and other properties will preserve Herring Bay’s rich history, habitats, and scenic values, which include:

- Hundreds of acres of contiguous forest that are classified as “hubs” of the state’s “green infrastructure,” which support birds and other wildlife that depend on intact habitat within the forest’s interior. The OCCF easement ensures that 313 acres will be managed in a way that minimizes disruption of those forest species.
- Natural shorelines and beaches, which are recognized as breeding habitat for horseshoe crabs, terrapins, eagles, and colonial nesting birds. The easement on OCCF established a shoreline sanctuary covering nearly a mile of natural shoreline, which must be maintained in a natural state to protect that habitat.
- Ecologically productive marshes and wetland forests, such as those documented in the 2009 field assessment of the Fairhaven “lake;”
- Historically significant archeological sites, such as the “lost town” of Herrington (which was centered in Town Point and extended south through the cliffs of Fairhaven) and the estate of Samuel and Anna Chew.

Do conservation easements give the public access to the property?

No, a conservation easement does not give the public any access to the property. The land is still the private property of the owner.

Are there incentives or benefits for owners who adopt easements?

Property owners who donate an easement receive financial benefits in exchange for their donation. Owners are generally compensated for the difference between the appraised value of their property with and without the easement. In Maryland, compensation is usually taken in the form of tax reductions, specifically:

- Lower real estate taxes. By promising not to develop the land, a property owner may reduce the market value of that property. In Anne Arundel County, property owners are eligible for a perpetual 100% property tax relief on the unimproved portion of their land to compensate for that reduction in value.
- Lower income taxes. Since the gift of a permanent conservation easement to the land trust is considered a charitable donation, the value of the easement may be deducted from federal and state income taxes as a charitable deduction. The value of the contribution is deducted from your income taxes over a six-year period.
- Lower estate taxes. When the appraised value of property is lowered because of the commitment to limit development on the property, the estate tax valuation is also lowered.

In some cases, the property owner receives compensation in the form of an upfront payment in lieu of tax benefits or a combination of payments and tax benefits. Sources of funding for such purchases can include government and private programs for protecting open space, agricultural areas, or other natural resources.

What costs are incurred by an owner who adopts an easement?

Easements require careful financial analyses, legal documentation, and other administrative reviews. The property owner usually covers the costs of appraisals and other administrative tasks, but in some cases those costs are borne by other parties.

Can property owners create an easement that does not reduce the property value?

As noted above, owners are compensated for costs stemming from a reduction in the market value of their property. Those costs (and the compensation) depend on the conditions in the easement, which are adopted voluntarily by the owner. Covenants that reduce development rights probably would lower a property's value, such as the provisions adopted by Virginia Quigley that prohibit any subdivision of OCCF and limit the number and size of the residences. In contrast, covenants that restrict only the location of development or impose special performance standards may benefit the environment without dramatically affecting market values, such as the new shoreline and forestry protection measures adopted by the Nature Conservancy for OCCF.

How does the easement process work in the Herring Bay area?

The Maryland Environmental Trust (MET) partners with more than 50 local nonprofit land trusts to acquire and administer conservation easements. The MET is a statewide government organization with a private Board of Directors. It seeks to protect land parcels of 25 acres or more, while the local land trusts focus on smaller acreage. In our section of Anne Arundel County, the local land trust partner for MET is the Scenic Rivers Land Trust (SRLT). A property owner in our area can contact the SRLT to inquire about a conservation easement, arrange for a site visit, receive a draft deed, get help with appraisals, etc.

What guarantees does a property owner have that the conservation easement will be honored in the future when the property is inherited by or sold to another owner?

As noted on the SRLT website: “The decision to create and donate a conservation easement is entirely voluntary. However, once the restrictions specified in the agreement are set in place, they ‘run with the land’ and are binding in perpetuity on all future owners of the land. The land trust has long-term responsibility for monitoring use of the land to ensure compliance with the terms of the agreement.” For example, MET monitors easement properties regularly through its Stewardship Program to help owners ensure that they remain in compliance with the terms of the easement.

Easements are recorded in the Land Records of Anne Arundel County. Any title search (generally done when land changes hands) will therefore reveal the existence of the easement. Even if future property owners are unaware of the existence of the easement, they remain legally bound by it. Under federal law, the easement and responsibility for enforcement will be assigned to another land trust if an individual land trust ceases operation.

Can a future owner undo the terms of a conservation easement by working through the state legislature to enact a special-interest law that would weaken the easement?

No. Perpetual easements are contracts that cannot be amended by legislative action. However, easements may not trump generally applicable laws. For instance, real estate clauses that discriminated on the basis of race have been voided by federal laws that ban such discrimination.

Can a future property owner undo the terms of a conservation easement by paying the government for the value of the tax benefits that were received by the owner who adopted the easement?

No. Perpetual easements are contracts that cannot be bought or sold. By law, only contracts that are in effect in perpetuity are eligible for federal Maryland tax benefits. Thus, a future owner cannot pay the government to modify the term of such contracts.

How can individuals help support conservation easements?

Both the MET and the SRLT welcome volunteers who receive training to monitor donated properties at least once a year to ensure that no violations to the conservation easement have occurred.

MET and SRLT also appreciate donations to support their efforts to help interested property owners adopt conservation easements. The SRLT has had some notable successes in protecting property in the South River area and at Old Colony Cove Farm. They are beginning to focus on our area – specifically the West/Rhode River and Herring

Bay watersheds – and are interested in working with landowners to protect and preserve additional parcels of undeveloped land.

Where can I get more information?

Maryland Environmental Trust: <http://www.dnr.state.md.us/met/>
Scenic Rivers Land Trust: <http://www.srlt.org/>