

# Conservation Easements *and* Historic Preservation Easements



**MICHIGAN HISTORIC PRESERVATION NETWORK  
ANNUAL CONFERENCE  
ANN ARBOR, MICHIGAN  
MAY 13, 2010**

**TERRY R. BRINKMAN  
MELISSA MILTON-PUNG**

# PURPOSE



- Natural, agricultural, and cultural resources provide important benefits to communities
- The preservation of these resources may be inter-related to the overall conservation and preservation values and goals of a particular property as well as the community.
- Purpose of this paper:
  - To provide a background on both tools
  - Offer information on the applicable use for historic preservation and land preservation
  - How they can achieve conservation and preservation goals

# CONSERVATION EASEMENTS



- Can be used to protect natural, agricultural, and cultural resources.
- Examples include:
  - Land trust use of a conservation easement to protect farmland;
  - Land trust use of a conservation easement to protect unique and scenic areas;
  - An historic district commission partnering with an historic trust or historic preservation non-profit to use a conservation easement to preserve historic sites or buildings;
  - A planning commission's use to preserve open space in a Planned Unit Development (PUD), site condo or a subdivision.
- Any combination of these examples are also possible as well as other possibilities.

# USE *with* HISTORIC PRESERVATION TOOLS



- Local Historic District Designations
- National Register of Historic Places and State Register of Historic Places
- The protection of historic resources can be included within the “Conservation Values” section of the conservation easement.
  - Including the requirement of the restoration of the historic resources
- A conservation easement can also provide permanent preservation for the surrounding landscape of an historic resource on the same property.
- The easement language can also refer to the local historic district designation and the process to obtain a Certificate of Appropriateness
- The easement language can also refer to the Secretary of Interior’s Standards for Rehabilitation and Rehabilitating Historic Buildings

# TYPICAL CONCERNS OF *of* CONSERVATION EASEMENTS



- **Typical Concerns:**

- Problems may exist with the landowner being able to obtain a future mortgage if the residential structure is within the conservation easement.

# BENEFITS *of* CONSERVATION EASEMENTS



- **Community Benefits:**
  - Valuable resources can be conserved without expensive fee-simple (outright) purchase of the property.
  - Productive farmland is not lost
  - Open space is preserved permanently;
  - Prevents the cost of services to communities from rising;
  - Supports other land preservation efforts
- **Property Owner Benefits:**
  - Federal tax credits;
  - Typically, public access is not granted;
  - Retain ownership of the land and can continue to farm and/or leave in open space uses;
  - Property taxes may be reduced;
  - Farmland and/or open spaces are preserved for future generations.

# MERRIMAN FARM HISTORIC DISTRICT *and* CONSERVATION EASEMENT



# CONSERVATION EASEMENTS CASE EXAMPLES



- **Merriman Farm, Manchester Township, Washtenaw County**
  - 78-acre historic farm
  - Includes 20<sup>th</sup> Century farmhouse
  - Designated in 2004 as an Washtenaw County Historic District
  - In 2007 Washtenaw Land Trust acquired a conservation easement on the farm.
  - References are included within the easement to the Washtenaw County Historic District Designation and Secretary of Interior's Standards.
  - Conservation easement provides protection of the surrounding landscape of the historic resources and a legal reference to both preservation mechanisms (historic district and easement).

# GORDON HALL HISTORIC DISTRICT *and* CONSERVATION EASEMENT



# CONSERVATION EASEMENTS CASE EXAMPLES



- **Gordon Hall, Scio and Webster Townships, Washtenaw County**
  - Two conservation easements acquired by both Townships through their respective Land Preservation Programs and Millages:
    - ✦ Scio Township portion acquired in 2007
    - ✦ Webster Township portion acquired in 2008
  - Property was designated as a Washtenaw County Historic District in 2001.
  - President Millard Fillmore's brother, Calvin Fillmore, was commissioned to construct the impressive Greek Revival house in 1841-1843 by Judge Samuel W. Dexter.
  - The six Doric columns of the Temple-like portico look out over the open areas of the property
  - Judge Dexter was a significant in bringing settlers to Michigan.
    - ✦ Substantial evidence that fugitive slaves on the path to freedom to Canada used Gordon Hall as a station.
  - The conservation easement preserves the 50 acres of land on the property, including the Washtenaw County Historic District Designation.

# HISTORIC PRESERVATION EASEMENTS



- The property in question must meet at least one criteria of significance, as set forth by the Secretary of the Interior:
  - **(a) that are associated with events** that have made a significant contribution to the broad patterns of our history; or
  - **(b) that are associated with the lives of persons** significant in our past; or
  - **(c) that embody distinctive characteristics** of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or
  - **(d) that have yielded, or may be likely to yield, information** important in prehistory or history.

# CRITERIA *for* SIGNIFICANCE



- Exceptional properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories of criteria considerations:
  - (a) A religious property
  - (b) A building or structure removed from its original location
  - (c) A birthplace or grave
  - (d) A cemetery
  - (e) A reconstructed building
  - (f) A property primarily commemorative
  - (g) A property achieving significance within the past 50 years

# LEGAL BASIS



- The legal basis of a Historic Preservation Easement is similar to that of a Conservation Easement.
- Historic Preservation Easements are enabled by the original Conservation and Historic Preservation Easement Act, P.A. 197 of 1980 [MCL 399.251], and this act subsequently became a part of the Natural Resources and Environmental Protection Act, P.A. 451 of 1994, Subpart 11 [MCL 324.2140 – 324.2144].

# BENEFITS *to the* COMMUNITY



- Preservation easements keep properties on the tax rolls.
- Preservation easements respect property owners' privacy.
- Landowners retain all the other rights associated with the property, including their right to lease or sell the land.
- And, historic preservation easements contribute to the overall beauty of the community by:
  - Acting to preserve historic resources visible from the public right-of-way,
  - Assisting in maintaining the presence of historic buildings amid development pressures, and
  - Insuring the integrity of historic landscapes such as view sheds, field patterns, and historically significant vegetation.

# ADVANTAGES *of* HP EASEMENTS



- **Historic preservation easements are flexible instruments**
  - Can be tailored to the resources, the interests of the property owner, and the objectives of the protecting organization.
- **For the resource,**
  - Classification as a recognized historic site in a locale without a local historic district commission or other options for historic designation at the state or local level.
- **For the property owner of a historic or cultural property,**
  - Preservation regardless of ownership.
- **For the protecting organization,**
  - It's often substantially cheaper than the actual purchase of the property.

# TYPICAL CONCERNS *for* HP EASEMENTS



- In 2006, the IRS increased scrutiny of preservation easement applications and the use of associated tax credits. This shift in policy was due to a small percentage of past abuses related to exaggerated appraisals. Extreme care must be taken in obtaining an accurate appraisal from qualified professionals.
- As with conservation easements, there is potential difficulty obtaining a mortgage which is subordinate to the preservation easement.

# RESOURCES *and* LIMITATIONS



- Interested parties are strongly urged to fully research the instrument and the receiving organization before entering into any binding contract.
- Trusted resources include, but are not limited to:
  - Michigan State Historic Preservation Office
  - Michigan Historic Preservation Network
- Some cost is associated with the donation of an easement to a qualified and reputable steward organization. They cover easement administration costs such as staff time and travel expenses, necessary legal services, or other monitoring activities over time.

# CASE EXAMPLES *of* HP EASEMENTS



- **Bower's Harbor Inn**

- Partnership between the Grand Traverse Land Conservancy and the Michigan Historic Preservation Network
- 1880s historic in on the Grand Traverse Bay on the Old Mission Peninsula in northwest Michigan.
- 11-acre site is part of the region's publicly-supported preservation effort, spanning 20 years.
- 2008 Historic Preservation Community Award the Grand Traverse Heritage Center.



# CASE EXAMPLES *of* HP EASEMENTS



- **SunKarest Farm**

- Historic farmstead with adjacent suburban development.
- Michigan Historic Preservation Network partnered with SunKarest Farmstead LLC to place a preservation easement on approximately 17 acres, encompassing the 19-structure farm complex and other features include roads, walkways and plantings.
- Located in Lyon Township of Oakland County. Farm was initially patented in 1835, and remained a family farm until 2005.



# COMBINATIONS *of* TOOLS



1. **Historic Preservation Easement**
2. **Historic Preservation Easement [for historic resources] and Conservation Easement [for open space areas] on the same property**
3. **Local Historic District or a National/State Register Property with Conservation Easement on same property**
4. **Local Historic District/National and State Register Properties with Conservation Easements located on adjacent properties**

# CONCLUSION



- **Both conservation easements and historic preservation easements can be used:**
  - to achieve important land preservation and historic preservation goals,
  - both for the community and the property owner as well.
- **These two types of tools preserve the “placed-based assets” of individual properties and communities,**
  - and are complimentary in their efforts to achieve individual property and community goals.