855 (Rev. 1-03)

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DATE: **March 22, 2006**

TO: **Assessors**
Equalization Directors

FROM: **State Tax Commission (STC)**

RE: **Conservation Easements**

The purpose of this letter is to provide guidance on proper assessment practice for lands under conservation easement. Michigan statutes recognize conservation easements as voluntary restrictions that a landowner may put on property. MCL 324.2140 defines conservation easements as:

> (a) "Conservation easement" means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.

These easements are very common in Michigan. These easements must be recorded with the register of deeds, run with the land, and may be done "in the form of restriction, easement, covenant, or condition in a deed, will, or other instrument."

Under Michigan law, these easements may be granted to "a governmental entity or to a charitable or education association, corporation, trust or other legal entity." Most common in Michigan is private landowners putting conservation easements on their property to restrict development in perpetuity. These easements are often donated or sold to charitable land trusts for long-term enforcement and management.

Assessment of property containing valid easements must recognize that development restrictions affect valuation. The Michigan Tax Tribunal in *Indian Garden Group v. Resort Township* (1995) employs the "Before-After" methodology for their decision.

The before value (BV) represents the true cash value of the property without the easement and the after value (AV) represents the true cash value of the property after the granting of the easement and the highest and best use of the property under the easement.

The Tribunal gives the following guidance:

1. The appraiser should "examine the conservation easement document, and enumerate the easement property rights which have been granted."

2. Based on the property rights granted, the appraiser should look to market data, which reflect the similar loss of property rights or utility.

3. The after value is determined by either:
   a) Applying the percentage of loss to the before value, **or**
   b) Subtracting the dollar amount from the before value.

The after value is not an exemption; rather, can be determined on a year-to-year basis, incorporating new evidence and market data.

Assessors should be employing the Before-After methodology on lands with conservation easements.