

**USING
CONSERVATION
EASEMENTS**



TO



**PROTECT
AGRICULTURAL
LANDS**

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Using Conservation Easements to Conserve Agricultural Land

Agricultural land is often identified as a community's highest priority for conservation because of the comprehensive package of benefits that it offers a community:

- Produces local food, fiber and fuel
- Protected properties remain in private ownership and management
- Lower municipal and school budgets, lower taxes for everyone else
- Conserves soil and water resources, protects air quality, moderates climate
- Provides rural economic activity and jobs
- Usually encompasses some wildlife habitats such as woodlands and wetlands for native plants and animals
- Offers opportunities for recreation such as hunting, horseback riding, hiking, snowmobiling, fishing, and occasionally even offers public access for these types of activities
- Creates a beautiful, scenic agrarian landscape
- Provides educational opportunities for future generations
- Maintains a high quality of life and continues cherished traditions that are connected to the land

The conservation values of land, whether agricultural, historic, scenic or environmental, can be protected in a variety of ways. When a landowner wishes to protect his or her land from future development, *and* wishes to continue owning, using and managing the land, as in the case of agricultural properties, the best solution is what is known as a conservation easement. This fact sheet will describe how agricultural land can be conserved by using a conservation easement.



Agricultural Conservation Easements

A conservation easement is a voluntary, legally binding, and perpetual agreement between a private landowner and a municipal agency or qualified land trust like Saratoga P.L.A.N. It gets recorded in the county clerk's office and remains a part of the title to the property like a deed, even when the property ownership changes. The conservation easement will specify the conservation values of the property that are being protected and the restrictions and limits to development, management, or use of the land that are put in place to protect those conservation values.

The landowner retains the rights to sell, transfer and use the property, as long as the use is consistent with the conservation easement and protects the conservation values of the land. Tax incentives are offered for lands protected by conservation easements because conservation values such as water and air quality, climate moderation, food and timber production, wildlife habitat, and scenic views benefit the public. Public access to lands with conservation easements is not required but can be accommodated, if the owner wishes.

Each conservation easement is tailored for the landowner, the property, and the land trust or municipality accepting responsibility to enforce its terms. Conservation easements generally allow for current residential and commercial uses or future development within specified areas of the property.

Agricultural conservation easements generally permit adequate development of farm-related structures, typical farming practices, wood harvests, and hunting, horseback riding, fishing, and other recreational uses. Subdivision may be allowed for agricultural purposes and does not impair the agricultural viability of the property.

If natural resources such as native plants or animals and their habitats are the conservation values also being protected by a conservation easement, then the terms of an easement will allow the types of management that might be needed such as streamside buffers, invasive species control or prescribed burning. Mining is prohibited by conservation easements. If scenic values are being protected by a conservation

easement, then there may be restrictions on the placement or types of agricultural structures that can be built on the property.

Conservation easements can be:

- a. donated,
- b. sold,
- c. bargain sold, which is a combined sale and donation, or
- d. transferred to another property, if the local community has established a system for transferring development rights between properties.

The land trust or municipality holds the conservation interest and accepts the responsibility to see that its terms are upheld over time by current and subsequent landowners. The development rights are extinguished, allowing no one to re-use them.

Since conservation easements are placed on properties when their development rights are conveyed, and development rights are extinguished when conservation easements are placed on properties, the two terms are often used interchangeably.



Donation of Development Rights

Landowners can donate development rights on all or some of their property in order to ensure that, in the future, their land is never developed or only developed to the extent they specify. Easements can also be donated as a bequest or by heirs receiving the land through someone's will.

A qualified appraiser determines the value of the donation of development rights by comparing the "highest and best use" from recent sales of similar properties with and without development rights removed.

Income Taxes. The value of the donation can be claimed as a charitable deduction on the donor's federal and state income tax returns. In 2009, the donation can be claimed for up to 50% of Adjusted Gross Income (or 100%, if a bona fide farmer) and can be carried over for up to 15 years, or until the value is used up. There is a bill in both houses of Congress right now to make these enhanced charitable deduction incentives permanent.

Property Taxes. Local assessors *might* lower property assessments due to the removal of their development potential. It is up to the discretion of each local assessor to make

that determination. Easement donations also make the property owner eligible for a NYS income tax credit (rebate) for 25% of the county, town and school taxes that they pay on the land (not including improvements), even if they have an agricultural assessment, for a maximum of \$5,000 per year. If receiving the Farm School Tax Credit already, landowners cannot receive the school tax credit rebate twice.

Estate Taxes. For some easement donors, estate taxes are also lowered.



Purchase of Development Rights

Some landowners want to conserve their land but have a need to extract some equity from their property. Land trusts and municipalities are able to fully or partially compensate a landowner for the financial value of a conservation easement through “purchase of development rights” (PDR) programs.

Private grants, public funds from federal, state, county, or local sources, a partial donation of the value by the landowner (a “bargain sale”), or some combination of these can be used to reach the appraised value of the development rights. Funding sources have varying conservation objectives, award criteria, match requirements, and easement restrictions.

It often takes cooperative partnerships to gather enough resources for PDR projects. PDR funding programs are administered by the New York State Department of Agriculture and Markets, Department of Environmental Conservation, Office of Parks, Recreation and Historic Preservation, USDA’s Natural Resource Conservation Service, and the counties of Saratoga, Washington and Rensselaer. Many local towns contribute toward PDR projects, too.

Saratoga P.L.A.N. can help landowners find the right funding match for a property owner and, as a nonprofit organization, can apply for grants directly or in partnership with a municipality. The Saratoga County Planning Department and Saratoga P.L.A.N. collaborate closely on conservation projects with landowners, developers and partnering municipalities to make it all work for the landowner. In addition to seeking grant funds, we consult with landowners to think through the site planning, easement restrictions, finances, and future land ownership aspects of conservation easement projects.



Transfer of Development Rights

New York State law defines transfer of development rights (TDR) as “the process by which development rights are transferred from one lot, parcel or area of land in a sending district to another lot, parcel or area of land in one or more receiving districts.”

The purpose of a TDR program is to enable and encourage flexibility of design and careful management of land while protecting the natural, scenic, historic or agricultural qualities of a community. Municipalities are given much flexibility in designing TDR programs to achieve their goals. TDR programs seek to provide a mechanism for a voluntary exchange to steer development toward more suitable areas and away from areas that a community wants to conserve, without taking away property rights or reducing property values.

Landowners in “sending” districts sell the development rights on their land either directly to landowners wishing to develop more intensely in “receiving” areas or to development rights banks established by the municipality. Instead of creating geographic sending and receiving districts that can differentially affect property values, sending districts can be defined by resources such as stream buffers or productive agricultural soils. In this way, no one area is burdened unduly with either the loss or the increase in development, but resources, wherever they occur within the municipality, can be protected.

The end result, though, is the same – the landowner sending or selling development rights has a conservation easement placed on the property. Clifton Park is the only municipality in Saratoga County with a TDR program at this time; they call it a density incentive overlay area.

For further information on how you or your community can conserve farmland, please contact Saratoga P.L.A.N., 112 Spring Street, Room 202, Saratoga Springs, New York 12866, 518-587-5554 x1. Saratoga P.L.A.N. is a nonprofit land trust organization that works with landowners and communities to conserve farmland, forestland, natural areas, trail corridors, and historic sites. To date, we have conserved over 3,115 acres in Saratoga County, including 5 farms.