



saratoga
PLAN

Preserving Land and Nature

question & answers for landowners considering land conservation

Thinking about conserving your land?

Wondering what your options are?

Here's a primer of frequently asked questions to get you started. Reading these questions and answers will undoubtedly stimulate additional questions.

Saratoga PLAN staff meets with landowners to help you find the answers you need in order to decide if conservation is right for you, your family, and your land. Consultations are free and confidential.



Carver Farm Conservation Easement, Saratoga County, N.Y.

WHY DO LANDOWNERS CONSERVE THEIR LAND?

Landowners conserve their land for a variety of reasons. First and foremost, they love their land and appreciate what it offers to them and to the broader community. Whether they are driven by a desire to retain the land's values for wildlife habitat, food and timber production, water and air purification, outdoor recreation, or scenic beauty, they want to ensure that these natural resources are sustained for future generations.

Typically, landowners who conserve their land are people who can see the big picture beyond their lifetimes and their property lines. They understand the landscape context within which their land is a part, like a patch in a quilt or a piece in a puzzle. They are looking forward to the future and understand that undeveloped land will be necessary and more precious for future generations. They know that it only takes one person in the chain of title to decide to convert it for development and make a permanent change in its use. Similarly, it only takes one person to decide to conserve it permanently – and they have decided to be that person. Often, landowners are looking back at their forebears and conserve their land in order to honor the legacy of the people who cared for the land before them.

Defining the purpose of conserving the land – whether it be habitat, food production, natural resource protection, public access or recreation, views - is the most important step in the conservation process and guides all steps along the way, and after completion.



For thirty years, Jim and Christine McKnight had dreamt of conserving their 63-acre patch of forested land in Northumberland, and in December of 2010, Saratoga PLAN acquired the property from the McKnights, opening it to the public two years later in 2013.

Christine states, "Our thinking was that we just don't want to see this [land] developed. Our number one reason was preservation. And our number two was as an investment for our children."



WHAT ARE THE DIFFERENT WAYS THAT LAND CAN BE CONSERVED?

Land can be conserved by transferring title or through an ongoing legal agreement that describes limitations on its development and use. The legal agreement most commonly used to conserve land is called a “conservation easement.”

Conservation transactions for both title transfers and conservation easements can be accomplished by outright donations, through sales at full market value, or through a bargain sale transaction that is a combination of sale and donation.

Transferring title means that the land will be owned by a conservation organization or government body for use as a park, trail, nature preserve, buffer to water resources, community-managed forest, scenic open space, or other public purpose. Transferring title can be done in the near term, or upon death through a retained life estate or bequest in a will or trust. Unless the agreement between the donor or seller and the conservation organization states otherwise, the property may be transferred to another owner at some time in the future; if there was an agreement that this land was to be permanently conserved, then the organization would place a conservation easement on the property when title is conveyed.

Transferring a conservation easement means that you, and all future landowners, will continue to own title to the property but have specified uses that can and cannot be permitted on the land in the future.

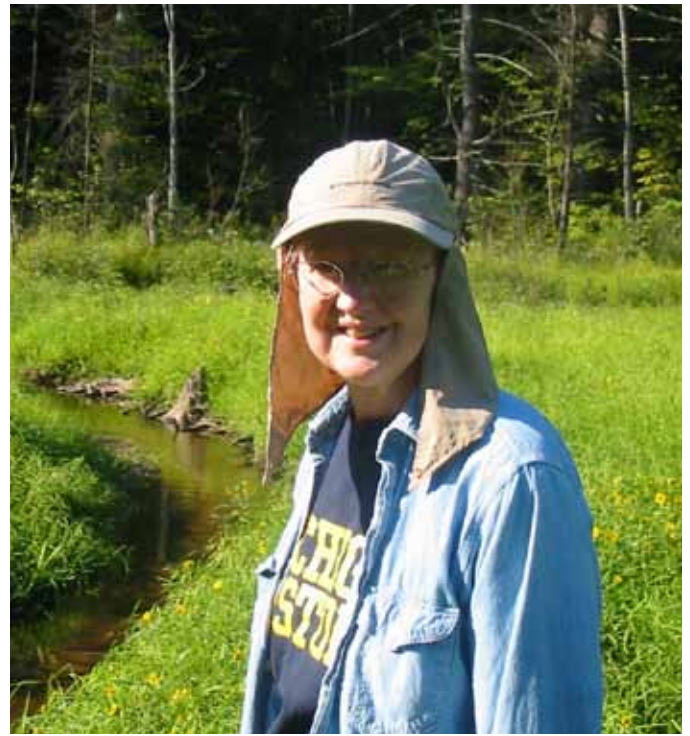
WHAT IS SARATOGA PLAN?

Saratoga PLAN is dedicated to preserving the rural character, natural habitats and scenic beauty of Saratoga County so these irreplaceable assets are accessible to all and survive for future generations.

Saratoga PLAN, which stands for “preserving land and nature,” is an independent, non-political, not-for-profit conservation organization. Formed in 2003, Saratoga PLAN is guided by a Board of Directors, and has a staff of four full-time employees who support the efforts of over 250 volunteers in shaping the future of Saratoga County communities and maintaining the region as a great place to live, work, play, farm, and visit.

Volunteers, student interns and Eagle Scout candidates work together on expanding a trail system through the county, managing 11 nature preserves open to the public for recreation, and providing events and outings for educating and connecting people to the land and promoting good health. As a land trust, Saratoga PLAN owns 28 properties and holds conservation easements on 27 properties, together totaling 3,605 acres. We assist communities with creating plans that balance growth with conservation goals.

The organization’s annual operational budget of approximately \$350,000 is obtained from donations, grants, and fees for services.



In 2013, in memory of Sandy, John Wolfe placed a conservation easement on his property so that the land and wildlife within that Sandy had loved in such a visceral way would remain conserved and safeguarded for the enjoyment of future landowners.

John Wolfe describes the execution of the conservation easement with Saratoga PLAN as simply the fulfillment of the plan that he and Sandy had made together more than ten years ago, stating that there is "still every reason...to follow through on our plans for conservation" and that Sandy "would be proud of the conservation of her property."

BASICS OF CONSERVATION EASEMENTS



HOW DOES SARATOGA PLAN DETERMINE WHETHER TO ACCEPT MY LAND OR CONSERVATION EASEMENT?

Saratoga PLAN has analyzed the landscape of Saratoga County to help guide our conservation work and investments. The Board of Directors has developed a set of criteria that it uses to evaluate and rank opportunities presented by property owners. Some of the considerations are the type of property, its location and context, its size, its habitat value, its agricultural value, its value as a potential trail corridor, its contribution to protecting surface and ground waters, whether there are other entities willing to partner on the project, our capacity to provide perpetual stewardship over the land or easement, and, of course, whether adequate funding is available to undertake the project.

Saratoga PLAN's Board of Directors ultimately makes the decision, using a two-part process: an initial approval to proceed, once staff and the landowner have given definition to the project, and then final approval to close, once due diligence (often including a review of title, completion of a survey, and an environmental assessment of the property) has been completed.

DOES CONSERVING MY LAND MEAN THAT I NO LONGER OWN IT?

Not necessarily. If you sign an ongoing legal agreement (a conservation easement), you can continue to own and manage your land, in accordance to the restrictions you have specified. You can lease out your land, pass it on to your heirs, or sell it in the future as you wish.

WHAT IS A CONSERVATION EASEMENT?

A conservation easement is a legal agreement between you and a land trust organization or government entity. It is tied to the land in perpetuity. Future owners will be bound by the terms of the conservation easement that you have placed on your land. The conservation easement is recorded in the county's land records and is registered with the NYS Department of Environmental Conservation.

WHO CAN HOLD A CONSERVATION EASEMENT?

Only a not-for-profit land trust organization or a local, state, or federal government body is qualified to hold conservation easements.

WHAT ARE THE RESPONSIBILITIES OF A LAND TRUST OR GOVERNMENT HOLDING A CONSERVATION EASEMENT?

The entity holding the conservation easement, whether a not-for-profit conservation organization or government body, agrees to uphold the terms and restrictions of the conservation easement in perpetuity. The easement holder will work with current and all future landowners to make sure they understand and are following the easement. The easement holder will communicate regularly with the landowner, visit and walk the property one or more times a year, maintain comprehensive documentation of the property's condition through descriptions, photos and maps, note all changes in the property over time compared to conditions at the outset of the easement, approve certain actions or changes allowed by the easement, enforce the terms of the easement by requiring correction of violations or taking legal action if easement violations are not corrected.



DOES CONSERVING MY LAND WITH A CONSERVATION EASEMENT AFFECT MY ESTATE IF I STILL OWN THE LAND WHEN I DIE?

The conservation easement will stay with the land, regardless of how it is passed on in your estate after you die. You can also donate a conservation easement on your land as a bequest through your will, or your heirs can choose to donate a conservation easement within a short window after you pass.

If you or your heirs donate a conservation easement on your land, the value of your land (not structures) may be able to be reduced, for estate tax calculations, by an additional 40% beyond its reduction in value due to the easement restrictions. See Section 2031(c) of the IRS tax code for the details on the estate tax reduction for easement donations.

CAN I TAKE OUT A MORTGAGE ON MY LAND IF IT HAS A CONSERVATION EASEMENT ON IT?

You are free to take out mortgages on land under easement. The lender, through a title search, will be aware that the land has a perpetual conservation easement on it. If the land has a mortgage on it before a conservation easement is placed on it, the mortgage must be paid off or the lender must agree to subordinate its interest to the conservation easement, ensuring that it cannot be challenged.

CAN A CONSERVATION EASEMENT EVER BE UNDONE?

Conservation easements are permanent legal restrictions on your land. They stick with the land regardless of who owns it in the future. Eminent domain - the taking of a property, or a portion of it - by a government body for a public purpose could impact land protected by a conservation easement. However, eminent domain may be less likely on land that has been conserved, and you may have a partner in the land trust holding the easement in fighting it if you wish to.

WHAT HAPPENS IF THE HOLDER OF THE CONSERVATION EASEMENT CEASES TO EXIST?

If the conservation organization or municipality ceases to exist, a qualified not-for-profit conservation with a similar mission or an alternative government body will assume the responsibilities of holding the conservation easement.

IF I DONATE MY LAND TO SARATOGA PLAN, WILL IT ALWAYS STAY CONSERVED, OR CAN THE ORGANIZATION SELL IT EVENTUALLY?

If Saratoga PLAN accepts a property for its conservation value, it is obliged to uphold that trust with the donor and whatever restrictions the donor made with the gift. If there is a legitimate conservation reason, Saratoga PLAN may transfer the property to another conservation entity, or sell it, retaining a conservation easement on the land to ensure that its conservation values are always protected.

If a landowner donates a non-conservation property, say a commercial property or a residential property on a small lot, as a general donation, like a piece of art or jewelry, Saratoga PLAN can sell that property and use the revenue to further its mission.

IF I PUT AN AGRICULTURAL CONSERVATION EASEMENT ON MY LAND, HOW CAN I ENSURE THAT THE LAND WILL REMAIN ACTIVELY FARMED?

It is nearly impossible to have 100% certainty that the land will be farmed at all times. For example, a landowner in the future may encounter health or financial problems that lead to retirement, or they may transfer the land to a non-farming heir. What a conservation easement will do, though, is to make sure that nothing happens to the land that prevents it from being farmed in the future.

One way that landowners have dealt with this issue is to include a clause in their conservation easement that requires owners to transfer it within the family or to a bona fide farmer. If the landowner is unable to do so, they sell it to the conservation organization holding the easement at its conservation value; the organization can then seek a bona fide farmer to own the land. This type of clause within an easement is called an Option to Purchase at Agricultural Value (OPAV). As a society, we have recognized the many public benefits and essential services that agricultural lands provide to our communities. Therefore, we have established ways to permanently conserve farmland and ensure that it will always be available to produce food and fiber. Conserving farmland is a strictly voluntary decision on the part of the landowner. There are a number of programs and tax benefits that provide incentives or compensation to farmland owners in exchange for conserving their farmland.

ARE THERE ANY OTHER LAND TRUSTS OPERATING IN SARATOGA COUNTY?

The Open Space Institute and The Nature Conservancy are the only other land trusts operating in Saratoga County. These organizations have specific areas within the county and specific types of land they conserve; it is also common for both of these land trusts to serve as pre-acquisition agents for eventually transferring properties to the state and federal governments. The Archeological Conservancy, a national organization, holds easements on two sites with archeological artifacts. Saratoga PLAN is the only land trust operating throughout the county on all types of conservation lands – farms, water resources, wildlife habitats, trails, and historic places. Saratoga PLAN is also unique in that it helps municipalities develop and implement community plans for growth balanced with conservation.

The Saratoga County Planning Office also assists landowners and municipalities with placing conservation easements on farmland.





In 1993, the opportunity arose for Joe and his late wife Carol to purchase the property from a retired school teacher, who also recognized the raw beauty of the special place. Joe and Carol made the decision to ensure that Bucket Pond remained protected, and within a year had placed the land under a perpetual conservation easement with the Saratoga Land Conservancy (now Saratoga PLAN).

A few years prior to conserving Bucket Pond, Joe's mother, Marion Bruchac, placed land she owned under a conservation easement, officially becoming the Saratoga Land Conservancy's first conserved property. Now over 20 years later, this land is home to the Ndinakina Education Center.



RESTRICTIONS & ACCESS OF CONSERVED LANDS



WHAT KIND OF RESTRICTIONS WILL BE PLACED ON THE USE AND DEVELOPMENT OF MY LAND IF I PUT A CONSERVATION EASEMENT ON IT?

The restrictions described in a conservation easement will depend on the purposes of the easement and what you are trying to protect with it. Some rights may be retained by the landowner, some may require notice and/or approval by the easement holder in order to exercise, and some may be outright prohibited. The easement will be tailored to your property and define what is needed to protect the desired conservation values.

Often, the amount of future development and subdivision, if any, for residential or commercial uses on the property will be eliminated or severely restricted. Mining will be prohibited. Farming, associated outbuildings, and ponds will be allowed in conservation easements designed for agricultural purposes. Forest management and timbering may be allowed with conditions. Hunting, fishing, hiking, cross-country skiing, snowmobiling and other noncommercial recreational activities may be permitted. Maintenance of wooded buffers to streams and ponds may be required.

The easement may delineate a specific area of the property where the uses and restrictions are different from other areas. If there is a residential area of the property, the easement will typically be very permissive within this area and accommodate all sorts of ordinary residential functions such as a house, yard, playground, swimming pool, well, septic field, sheds, home-based businesses, solar and wind energy generation, etc.

WILL THE PUBLIC HAVE ACCESS TO MY LAND IF I CONSERVE IT?

This depends on the reason why the land is being conserved and its context. If the land is being conserved for a trail corridor or a park or for access to water, then naturally it is highly likely that the future owner will open it to the public. Sometimes, even if a property is primarily being conserved for wildlife habitat or for farming, there may be limited public access allowed for a trail or waterside access that does not interfere with the primary purpose. Even if a public access use is not conceivable today, it is common for conservation easements to include a provision that landowners have the right, but not the obligation, to permit public access in the future if they desire, so as not to preclude this option in case a future landowner wishes to allow public access.

WILL SARATOGA PLAN HELP MANAGE MY LAND IF I TRANSFER A CONSERVATION EASEMENT TO THEM?

Saratoga PLAN will not manage your land if it holds a conservation easement. By walking the property every year, Saratoga PLAN provides another set of eyes on it, especially in the remote boundaries, and can alert you if trespasses are observed. Saratoga PLAN can also offer referrals and reference materials on land management issues you may be struggling with, such as invasive species, timber management, erosion control, drainage, beaver management, and so forth.



TRANSACTION PROCESS

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WILL I NEED TO GET A LAWYER IN ORDER TO CONSERVE MY LAND?

In almost all cases, the answer is yes. Saratoga PLAN will have its own legal representation for all conservation transactions, and you should, too. Saratoga PLAN is extremely reluctant to undertake a conservation transaction with a landowner who does not have their own independent legal advisor representing them and reviewing all legal agreements.

HOW LONG DOES IT TAKE TO COMPLETE A CONSERVATION TRANSACTION?

As little as six months or as long as three years from the time the decision is made. Projects that take a long time to complete usually involve title complications that need to be resolved or funding program delays that require multiple layers of approvals and negotiations.

HOW MUCH WILL IT COST ME TO CONSERVE MY LAND?

At a minimum, you will have the costs of your own attorney and, if you are claiming a charitable deduction, an appraiser.

Land conservation transactions are expensive. Transaction costs include such things as surveys, legal fees, title searches and insurance, appraisals, and property documentation. Saratoga PLAN will expend significant staff time in managing your project throughout the entire process, and must also receive a contribution to PLAN's Stewardship Fund, which ensures that we can uphold our land-owning or easement-holding responsibilities in perpetuity. Different properties provide various opportunities and we can help explore options with you for covering transaction costs. In general, conservation transaction costs range from \$40,000 to \$70,000, depending on their size and complexity. Saratoga PLAN will work with you to develop a budget for your project.

Some landowners are able to cover all the costs of conserving their land by making a cash donation to Saratoga PLAN. Some make donations over 2-3 years to cover the costs. For land-rich, cash-strapped landowners, there are funding programs and grants that may cover all or a portion of the transaction costs. Funding programs are highly competitive and are targeted toward priorities of the funder. Sometimes Saratoga PLAN is able to conduct private fundraising campaigns and write grants to help cover the transaction costs.



66% of the nation's freshwater resources originate on forest land. Woodlands absorb rainfall and snow melt, helping to minimize floods, reduce soil erosion, and improve water filtration and recharge to aquifers



In 2002 Martha Carver proudly placed a conservation easement on her family farm with Saratoga PLAN so that the farm and surrounding woods could be forever conserved. Knowing that Mike with the help of Saratoga PLAN will care for the land after Martha no longer needs it gives her a real "feeling of peace."



FINANCIAL ASPECTS OF CONSERVING LAND



ARE THERE ANY TAX BENEFITS FOR DONATING LAND OR CONSERVATION EASEMENTS?

Yes, there can be tax benefits in terms of federal and state income taxes, property taxes, and estate taxes which favor conservation donors under most circumstances.

CAN I CLAIM A CHARITABLE DEDUCTION ON MY FEDERAL AND STATE INCOME TAXES FOR THE VALUE OF THE LAND OR CONSERVATION EASEMENT IF I DONATE IT FULLY OR PARTIALLY?

Most landowners can claim a charitable deduction on their federal and state income tax returns for the value of a full or partial donation of land or a conservation easement. To be considered a charitable donation, the easement must meet the requirements of Section 170(h) of the IRS tax code. The basic federal income tax law permits taxpayers to claim charitable donations of up to 30% of their adjusted gross income in any one year. If the easement value is not used up, filers could continue to claim the charitable deduction for up to an additional five years of tax returns. Congress is considering a bill to enhance the charitable deduction limits for easement donors. The bill under consideration allows non-farming landowners to claim up to 50% of their adjusted gross income, and farmers to claim up to 100% of their AGI; both can carry that out for an additional 15 years, or until the easement value has been fully deducted.

CAN I RECEIVE COMPENSATION FOR CONSERVING MY LAND?

Possibly. There are a number of public and private programs that provide funding for significant conservation lands for various purposes. Naturally, there is not enough money to go around and many more landowners interested in receiving compensation for conserving their land than available funds. Funding programs are highly selective and competitive. Saratoga PLAN can help prepare applications and guide you through the application process if it looks like your land might meet the criteria used by one of the funding sources.

WHAT DOES PDR STAND FOR?

PDR stands for Purchase of Development Rights. This is the type of conservation transaction wherein a landowner receives compensation for the conservation easement. It is often used for protecting farmland.

WHAT IS A BARGAIN SALE?

A bargain sale means that a landowner receives some compensation but accepts less than the appraised full market value for their land or conservation easement. That is why it is referred to as a “bargain sale.” It is likely that the partial compensation is subject to the same rules as full compensation (such as capital gains tax liability) and the partial donation is subject to the same tax benefits as full donations (such as charitable deductions on income taxes).

WHERE DOES THE FUNDING COME FROM TO PURCHASE LAND OR CONSERVATION EASEMENTS?

There are a variety of public and private programs that provide funding for purchasing land and conservation easements. On the public side, there are federal, state, county, and town funding streams. On the private side, there are grants from foundations and fundraising from the community at large that stands to benefit from land conservation. Funding for land conservation is very competitive. Every funding program has its own criteria for selecting properties to invest in and its own set of rules that projects must adhere to in order to qualify.

If you are interested in receiving compensation for conserving your land, Saratoga PLAN can help you determine if your land would be competitive for any of the available funding programs.

HOW IS THE VALUE OF THE LAND OR CONSERVATION EASEMENT DETERMINED?

The value of the land or conservation easement is determined by a qualified appraiser. Saratoga PLAN has a list of appraisers who are experienced and qualified to determine the fair market value of land and conservation easements.

The appraiser will calculate the fair market value based on a determination of the highest and best and most likely use of the land and comparisons of other recent transactions of similar properties in the vicinity. For conservation easements, the appraiser will subtract the appraised value of the land with the easement from the value of the land before the easement; the difference is the value of the conservation easement or development rights that have been removed. Appraised conservation easements in Saratoga County have ranged from a few hundred dollars per acre to several thousand dollars per acre.

If you are donating all or part of the value of your land or conservation easement and wish to claim a charitable deduction for your donation, you will need to retain the services of a qualified appraiser to submit with your income tax filing. IRS form 8283 needs to be signed by both the appraiser and Saratoga PLAN for submission with tax returns. Saratoga PLAN needs to review a copy of your appraisal report and may refuse to sign form 8283 if the organization feels that the donation being claimed is exorbitantly inflated.

Saratoga PLAN will also retain the services of a qualified appraiser if you are being provided compensation for your land or conservation easement. As a private, not-for-profit organization, PLAN cannot pay more than appraised value for land or easements.

WILL I KNOW THE VALUE OF MY LAND OR CONSERVATION EASEMENT BEFORE I ENTER INTO AN AGREEMENT TO CONSERVE MY LAND?

Landowners who wish to know with certainty the value of their donation or sale of the land or easement prior to entering a conservation agreement need to invest in an appraisal at their own expense. Many times an appraiser can be contracted for a two-phase valuation – an initial determination of value for a partial fee and, if you decide to proceed, a full appraisal report for the balance of the normal fee.

At least one of the funding programs, the Natural Resource Conservation Service’s Agricultural Conservation Easement Program, favors applications with accompanying appraisals.





In 2003, the Hennigs placed a conservation easement on their property in the Town of Providence, New York with Saratoga PLAN, so that they could ensure that the land they loved would remain conserved and true to its natural character forever. Years later, in the fall of 2010, the Hennigs worked with PLAN yet again, this time in donating a majority of the acreage (~606 acres) so that PLAN could care for the land in perpetuity and open the preserve up for the enjoyment of the public.



TAXES



WILL I HAVE TO PAY FEDERAL AND STATE CAPITAL GAINS TAXES FOR THE COMPENSATION I RECEIVE FOR SELLING LAND OR A CONSERVATION EASEMENT?

Probably. Determining capital gains requirements can get a little tricky, depending on the basis of the property, or the value when you acquired it. For easements, which reflect only a portion of the total value of the property, capital gains tax liability needs to be carefully calculated. Your financial advisor or tax preparer can help you determine if and how much to expect to pay in capital gains taxes.

You may be able to defer capital gains tax payments to the future if you invest the compensation you receive in a commercial property (like additional income-producing farmland) within a period of time. This type of transaction is known as a 1031 “like-kind exchange.” You will want to retain an attorney versed in like-kind exchanges to ensure that the transactions are properly executed for a legitimate like-kind exchange.

WILL I HAVE TO PAY PROPERTY TAXES ON MY LAND IF IT IS CONSERVED? WHAT WILL HAPPEN TO THE TOWN’S ASSESSED VALUE OF MY LAND?

If you are transferring title to your land, you will not have to pay property taxes on your land. Saratoga PLAN, if it becomes the owner, will seek property tax exemption as a not-for-profit organization. If you retain a life estate, you will continue to pay property taxes until you no longer manage the property.

If you transfer a conservation easement, you will continue to pay property taxes. You may ask your town’s assessor to lower the value of your land due to the permanent restrictions you have placed on it. It is up to each individual assessor to decide whether to do so; most do, a few won’t. If you are already receiving agricultural assessment, it is unlikely your assessment will be lowered further.

WHAT IS THE INCOME TAX CREDIT FOR CONSERVATION EASEMENTS?

New York State offers an income tax credit as an incentive for landowners who have donated a conservation easement on their land. The tax credit is available when a conservation easement has been fully donated or even for bargain sales. Essentially, the tax credit works as an annual rebate for 25% of your county, town, village, and school taxes, up to a maximum of \$5,000. It applies only to the taxes you pay on your land under conservation easement (not to improvements). As long as this tax law remains in effect, the tax credit can be claimed by future landowners of the property who were not the original easement donors. The tax credit is even applicable for out-of-state owners who pay no NYS income tax.

This is how it works: You donate a conservation easement, fully or partially. Saratoga PLAN registers your conservation easement with NYS DEC and provides you with a registration number. You pay your school, town and county property taxes as always. (This program does not harm the local tax base.) You calculate the portion of your property taxes that is attributed to the land, not the improvements. When filing your NYS income taxes, you complete form IT-242 and receive a rebate from the state for 25% of the local taxes you paid on the land portion of your real estate.





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FOR FURTHER INFORMATION ON HOW YOU OR YOUR COMMUNITY
CAN CONSERVE LAND, CALL 518-587-5554 OR VISIT
SARATOGAPLAN.ORG



IMPORTANT DISCLAIMER

Saratoga PLAN is not qualified to offer legal, tax, or financial advice. The information provided is general in nature and is intended as a tool to assist landowners. It is provided with the understanding that Saratoga PLAN is not engaged in rendering legal, accounting, tax or other counsel and should not be relied on as such. Every parcel of land and every landowner are unique. Property owners are urged to consult with their own legal, tax, accounting, and financial professional advisors to determine if the information provided by Saratoga PLAN applies to their particular situation.