

## *Questions and Answers on Conservation Easements*

### **What is a conservation easement?**

A conservation easement is a voluntary agreement to protect land in perpetuity. Although filed with the deed, it does not transfer land ownership, but rather spells out a landowner's commitments to protect the existing character of the property. It is a flexible tool, and is written to protect land in accordance with the landowner's wishes and the Land Trust's mission.

### **If I give a conservation easement, do I still own and control my property?**

Yes. You can still own, sell, lease, mortgage, farm, conduct forestry, or otherwise use your property consistent with the terms of the conservation easement. Only the specific restrictions that you have negotiated with FLLT limit what can be done with the property.

### **Does a conservation easement require me to allow public access to my land?**

No. The conservation easement does not give the public any rights to your land unless you decide to include such rights in the easement.

### **To whom is a conservation easement given?**

A conservation easement can be given either to a qualified non-profit organization or to a public body such as a town, a county or a state agency. The recipient of the easement must accept it in writing and agree to enforce the terms of the conservation easement to assure that future owners of the property abide by it. FLLT is a non-profit organization qualified to hold conservation easements.

### **How does the Land Trust administer, monitor, and enforce the conservation easements it holds?**

FLLT values the partnerships we have with private landowners and the organization places a high priority on conservation easement stewardship. This is necessary to ensure that the easement donor's conservation legacy is carried forth far into the future, and is critical for maintaining the integrity of conservation easements as an effective means of protecting land.

A principle element of good easement stewardship is the completion of routine property monitoring visits, typically once a year and with advance notice to the landowner. Through the monitoring process, changes that occur on the property are documented and compliance with the easement is confirmed. The Land Trust emphasizes good communications with easement landowners and serves as a resource for information on natural resource management issues. The organization must be prepared, however, to enforce the easement in a court of law if necessary. Consequently, the Land Trust adds to its Stewardship Fund every time it accepts a conservation easement.

### **What is the difference between a conservation easement and a "deed restriction"?**

A deed restriction (also called a "restrictive covenant") can protect property but also is subject to certain legal limitations that can make them more difficult to enforce than a conservation easement. Conservation easements, established under Article 49, Title 3 of the Environmental Conservation Law and Section 247 of the General Municipal Law, enjoy special legal status and their protections are more

likely to stand the test of time over time. Conservation easements also can provide tax benefits that are not available with deed restrictions.

**What if I want to sign a natural gas lease?**

FLLT conservation easements do not affect leasing of subsurface rights, but they do limit the types and extent of surface disturbances that may occur related to natural gas collection. FLLT strongly prefers that no surface drilling occur on properties subject to conservation easements. However, on a case-by-case basis, FLLT may be able to accommodate limited collection of natural gas on a property, subject to FLLT approval and oversight. This depends on the character of the natural resources of the property and the potential impacts natural gas collection may have on those resources. If your land is already under lease for natural gas exploration or drilling, the terms of the lease will determine whether or not FLLT will be able to work with you. FLLT will have more flexibility to work with you if you contact us prior to signing a natural gas lease.

**What are the potential tax benefits?**

When a conservation easement meets the federal requirements for a charitable gift, the donor of the easement may be entitled to substantial federal tax benefits. *The landowner should discuss this with his/her tax advisor or attorney.* The basics of the federal tax benefits are:

- Donor can deduct up to 50% of their adjusted gross income (AGI) per tax year;
- Allows qualifying farmers and ranchers who donate a conservation easement to deduct up to 100% of their AGI; and
- Permits a carry-forward period for taking tax deductions of up to 15 years.
- These benefits will fall to lower levels after December 31, 2011, if they are not passed again.

If landowners donate a conservation easement and wish to apply for a tax deduction, they must get a certified appraisal documenting the value of the conservation easement donation, within the same tax year of, but no more than 60 days prior to the donation. An appraisal is not needed at the time of closing. There may also be estate tax benefits associated with donating a conservation easement.

New York State Tax Credit will give landowners whose land is restricted by a donated or partially donated conservation easement an annual refund of 25% of the property taxes paid on that land, exclusive of the structures and improvements, up to \$5,000 per year. It is important to note that the local municipality does not experience a reduction in tax revenue because the tax credit is offered by New York State. *Please consult with your tax advisor or attorney to find out how the various tax incentives may benefit you.*

• **Who can I contact if I have questions?**

David M. Diaz  
Finger Lakes Land Trust  
Director of Land Protection  
(607) 275-9487; [daviddiaz@fllt.org](mailto:daviddiaz@fllt.org)

Betsy Landre  
Finger Lakes Land Trust  
Western Lakes Senior Field Rep.  
(585) 880-9934; [betsylandre@fllt.org](mailto:betsylandre@fllt.org)

Kris West  
Finger Lakes Land Trust  
Southern Tier Senior Field Rep.  
(607) 377-4026; [kriswest@fllt.org](mailto:kriswest@fllt.org)