



Afoot in the Field

A Resource for Conservation Landowners in the Finger Lakes Region

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Conservation Easement Amendments

One of the most difficult questions to answer about conservation easements is, “Once a conservation easement is granted, can it ever be changed?” The answer is yes, provided that the amendment maintains or enhances the agreement’s conservation values. However, it is not a quick and easy process.

Amendments are recorded legal documents just like the original conservation easement. Easements are meant to be permanent agreements and represent a commitment made between the easement donor and the Land Trust. The Finger Lakes Land Trust, like other land conservation organizations operating within the standards set by the Land Trust Alliance and the Land Trust Accreditation Commission, has a policy in place to guide how we handle conservation easement amendments.

Part of the success of the organization’s mission depends on the confidence of easement donors, supporters, and the public in the Land Trust’s ability to monitor and enforce the agreements. This confidence would be seriously eroded if the Land Trust allowed modifications of easements in ways that would weaken the protections they provide. This could also raise serious legal issues with the Internal Revenue Service and New York State law, as the Land Trust’s non-profit tax-exempt status prohibits the organization from providing private inurement or other impermissible private benefit. Furthermore, the original easement donor may have claimed a charitable income tax deduction for the value of an easement donation, which could be rendered fraudulent by an amendment that would reduce the easement’s value. Therefore, it is FLLT policy to hold and enforce conservation easements as written, and to only consider and enact amendments to easements under circumstances where a change is clearly warranted, impermissible private benefit is not conferred, and the conservation values of the property will not be adversely impacted.

Photo: Marie Read

Conservation easement amendments are not a right of the easement grantor or successor owner; all amendments are made at the sole discretion of the Land Trust. The Land Trust has to be deliberate in its approach to considering and consenting to conservation easement amendments. Amendments that achieve additional conservation protections and further the conservation goals and mission of the Land Trust may be encouraged. The Land Trust may also consider amendments that will have a neutral impact on the easement's protection of conservation values, but clarify its language or correct an error. Under no circumstances will FLLT consider proposed amendments that violate federal or state regulations or impair, threaten, or reduce the conservation values of an easement.

In 2011, and again this year, I worked closely with the owners of two conservation easement properties who wanted to amend their original easements for the purpose of protecting additional lands. Elaine Mansfield, in the town of Hector, Schuyler County, purchased a 1-acre lot adjacent to her 70-acre easement property, removed a trailer and failing septic system, and restored the land to wildlife habitat. Additionally, Steve and Kathy Trechter purchased a 25-acre vacant parcel adjacent to their original 57-acre easement property in the Town of Orange, Schuyler County, preventing a 4-lot subdivision that had been proposed by the previous owners.

These two projects were valuable and worthwhile not just because of a few extra acres protected from development, but also because of their proximity to other conserved lands. The Mansfield property is adjacent to the Finger Lakes National Forest and the Trechter property is completely surrounded by Sugar Hill State Forest and hosts a section of the Finger Lakes Trail. These situations embody the most compelling reasons to amend a conservation easement and show how committed some landowners are to furthering land conservation in the Finger Lakes region. I hope you enjoy some of the thoughts and perspectives that these landowners have shared in this issue of Afoot in the Field.



Chris Olney
Director of Stewardship

To learn more about the recent amendment to Steve and Kathy Trechter's conservation easement, visit our web site at www.fllt.org/news.



Landowner Profiles:

Elaine Mansfield
and
Steve and Kathy Trechter



FLLT: *What first motivated you to grant a conservation easement on your property more than 10 years ago?*

EM: A mature and healthy oak woods bordering my property was harvested by a big lumber company. The destruction was alarming and thorough. My husband and I didn't want that to ever happen to our beautiful forest, so we protected it for the future.

SKT: Before relocating to the Finger Lakes, we had never lived in an area where so much physical beauty prevailed. We wanted to extend the possibility of this experience to others by insuring that what we discovered would remain available to others who follow us.

FLLT: *Since then, what kind of relationship have you had with the FLLT?*

EM: My experience with FLLT has been positive in all ways—from figuring out the financial implications of the agreement to continuing to watch over the forest. Just this morning, I walked with conservation forester Mike DeMunn who is creating a new ten year forest plan. Despite the dry weather, the forest is healthy thanks to good forestry practices.

SKT: We were gratified by our choice of the Finger Lakes Land Trust. No organization, in our experience, is better able to communicate clearly and reliably through its personnel those steps necessary to achieve an outcome that will endure.



*Elaine Mansfield's property in the town of Hector, Schuyler County
Staff photo*

FLLT: *Why was it important to you to amend your conservation easement for the purpose of protecting additional adjacent land?*

EM: A one acre lot that had once been part of this property had unkempt buildings and a sewage system that drained into the creek. When it came up for sale, I bought it, had the buildings removed, joined the deeds of the one acre and my 70 acre property and made it part of the easement. New trees are growing there now—just what I hoped would happen.

SKT: While the most important means of transportation in our lives is the earth itself, we can only return a token of what is due for the journey and destination it has provided us. Those who use the Finger Lakes Trail/ North Country Trail enjoy those permanent easements across private land.

FLLT: *Do you feel that the amount of time and expense to go through the amendment process was reasonable?*

EM: Yes. After buying the property and joining the two parcels, the last step

with the Land Trust wasn't difficult or expensive. I was happy to do it for myself and in honor of my husband who died in 2008.

SKT: Given the enormity of sustaining this natural world of beauty, no expenses we have incurred seem remotely burdensome considering the rewards we have received.

FLLT: *Was the potential for realizing a tax deduction for the value of your additional charitable gift a motivating factor in your decision to go through the amendment process?*

EM: Not really. I wanted to do it for the sake of the wholeness and beauty of the property. The acre had been sold before we bought the land, so I was putting the pieces of the puzzle back together. The extra acre didn't increase the assessment on my property much, so the charitable gift aspect was small.

SKT: Although we were not aware of specific tax benefits available to us, we appreciate those considerations.

FLLT: *Do you think there is awareness and appreciation of your commitment to land conservation by your neighbors or people in your community?*

EM: A few people, but not many. I talk about the conservation easement to anyone who is interested, especially people with appropriate property. I've also written about it on my blog, for example, in a piece called "For the Love of Trees: 2005" (<http://elainemansfield.com/2013/for-the-love-of-trees-2005/>).

SKT: We can only hope that others who own land adjoining State lands will consider donating conservation easements to the Land Trust (while still retaining ownership).



*Trechter Property
Staff photo*

Finger Lakes Land Trust Amendment Standards



An amendment request may be implemented only when Land Trust staff and Board of Directors determine that:

- The requested modification is consistent with the stated purpose(s) and intent of the original conservation easement, and is not in conflict with or contrary to the intent and wishes of the original easement grantor;
- The requested modification results in no net loss in conservation value on the property;
- The requested modification is warranted under one or more of the Amendment Purposes set forth below;
- The requested modification is the minimum change necessary to satisfy that purpose, unless increasing or enhancing the protection of conservation values;
- The amendment will not impair the Land Trust's ability to steward, defend, or enforce the conservation easement;
- The amendment will not threaten the perpetual duration of the easement or cause it to be terminable;
- The requested modification is legal, does not violate the FLLT Conservation Easement Amendment Policy or other FLLT policies, and does not confer private financial benefit or otherwise violate tax law or jeopardize the Land Trust's non-profit status;
- The amendment must be in compliance with the requirements of any direct funding source of the original conservation easement; and
- The requested modification will not erode the confidence that the public and the organization's supporters and peers have in the organization and its intent to enforce its conservation easements.

Amendment Purposes

The Land Trust will consider modification of a conservation easement only if all Amendment Standards are met, and in the following circumstances:

- **Enhanced Protection.** The proposed amendment would significantly increase or enhance the protection of a property's conservation values.

- **Prior Agreement.** In a few cases, a conservation easement may have a specific provision allowing modification of the easement at a future date under specific circumstances. Such agreements must be set forth in the conservation easement document. The amendment must be consistent with the terms and conservation intent of the original agreement.
- **Correction of an Error or Ambiguity.** The proposed amendment would correct an error, oversight, or ambiguity made at the time the easement was granted. This may include such things as the correction of a legal description, inclusion of standard language that was unintentionally omitted, or clarification of language that is ambiguous.
- **Update Old Easements.** An amendment may be used to clarify, revise, or update the language and/or legal provisions in older easement documents to a current format.
- **Settle a Condemnation Proceeding.** Conservation easements held by the Land Trust may be subject to a condemnation proceeding (eminent domain taking) for public/municipal purposes. Where it appears that the condemnation power would be properly exercised, the Land Trust may enter into a settlement agreement with the condemning authority in order to avoid the expense of litigation. In reaching such an agreement, the Land Trust shall attempt to preserve the intent, terms, and conditions of the original conservation easement to the greatest extent possible.
- **Response to a Substantial Alteration or Destruction of a Conservation Value.** Should a conservation value recognized by the conservation easement be substantially altered, diminished or destroyed by a cataclysmic natural disaster, climate change, species extinction, or other such event, the Land Trust may amend the easement to protect and preserve the remaining conservation values of the property.
- **Amendments Consistent with Conservation Purpose and Values.** The Land Trust may authorize other modifications of a conservation easement if the modification is consistent with the intent of the original parties and with the statement of purpose contained in the easement document, and if the Land Trust determines that the level of conservation protections provided by the amended easement is the same or greater than that provided by the easement before the amendment.
- **Amendment is consistent with all applicable laws and regulations.** Under no circumstances will the Land Trust knowingly enter into a conservation easement amendment that would violate any applicable law or regulation.



Hamlin Conservation Easement, Ontario County

Photo: Nigel Kent

The Finger Lakes Land Trust is a member supported, non-profit conservation organization that works cooperatively with landowners and local communities to conserve forever the lands and waters of the Finger Lakes region, ensuring scenic vistas, local foods, clean water, and wild places for everyone.

***Afoot in the Field** is a newsletter provided by the Land Trust for landowners in the Finger Lakes who own properties that are permanently protected with a conservation easement, or who are otherwise committed to, or interested in, land conservation and wildlife habitat protection and improvement. For more information about the Finger Lakes Land Trust and its conservation programs, visit www.fllt.org or call 607-275-9487.*

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