

# Conservation Easements - Questions and Answers

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

A conservation easement is a voluntary agreement to protect land, usually in perpetuity, by limiting development and influencing other rights on a property. Although filed with the deed, conservation easements do not transfer land ownership. Rather, easements spell out how the property will be protected by limiting uses and guiding some uses to suitable areas. Conservation easements are flexible tools. Each is crafted to the unique characteristics of a property, and each is written to protect important natural features of land according to the landowner's management goals and the Land Trust's mission.

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

Yes. You still own and can sell, reside on, mortgage, leave to heirs, farm, rent, manage wildlife, conduct forestry, or otherwise use your property consistent with the terms of the conservation easement. In most cases, once a conservation easement is in place, landowners change very little in how they use their land. In fact, they often have greater peace of mind because they know the character of their land is secured.

## **What if I want to lease my land?**

Finger Lakes Land Trust (FLLT) conservation easements can accommodate certain leases as long as they are consistent with the easement terms. For instance, leasing fields to a farmer or a woodlot to a hunter can work within a conservation easement. Other kinds of leases that include broader rights to use and develop a property, like solar or mineral leases, may not be consistent with a conservation easement because our easements limit surface development. If your land is already under lease, the terms of the lease will determine whether or not FLLT will be able to work with you. If your land is leased or if you are thinking about leasing it, just be sure to let us know so we can address these important details early in the process.

## **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 granted to either a qualified non-profit organization or to a public body such as a town, county or state agency. The recipient of the easement must accept it in writing and agree to enforce its terms to ensure that future owners of the property abide by it. To be enforceable, conservation easements must be recorded in the public record. FLLT is a non-profit organization qualified to hold conservation easements.

## **Am I giving away my development rights when I donate a conservation easement?**

No. A conservation easement extinguishes or limits development rights; they are not transferred. The holder (grantee) of the conservation easement has legal standing to monitor the property and enforce the terms and conditions of the easement once it is signed and recorded.

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

FLLT values the conservation partnerships we have with private landowners and we place a high priority on conservation easement administration and stewardship. This ensures that the conservation legacy of the easement donor endures far into the future, and it is critical for maintaining the integrity of conservation easements as an effective means of protecting land and natural resources.

Routine property monitoring visits, typically conducted once a year, are a foundation of our easement stewardship program. By regularly visiting a property we can document any changes and confirm compliance with the easement terms. Additionally, the Land Trust emphasizes good communication with easement property owners and we often provide natural resource management information as well as address issues specific to the conservation easement.

Our organization must be prepared to enforce the conservation easements that we hold, even in a court of law if necessary. Consequently, to meet our long term monitoring and enforcement obligations, we increase our Stewardship Fund with every conservation easement we accept. Stewardship Fund contributions can come from the landowner, grant sources, private donors, or public funds.

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

Deed restrictions, also called “restrictive covenants”, can protect property but they are not typically permanent, confer no tax benefits, and are subject to legal limitations that can make them more difficult to enforce than a conservation easement. Conservation easements, on the other hand, enjoy special legal status and certain tax benefits under both federal and state law; and, are held by organizations or agencies that have the defense and enforcement of conservation easements as part of their mission and policies. Unlike deed restrictions, only a judge’s ruling or eminent domain can terminate a conservation easement. So, the protections afforded by conservation easements are far more likely to stand the test of time.

### **What are the Potential Tax Benefits?**

Property owners who donate, or sell at a reduced rate, a conservation easement for charitable purposes may be entitled to a federal income tax deduction and a New York State Conservation Easement Tax Credit. Some people may also be eligible for estate tax benefits. *Please consult with your tax advisor or attorney to find out how the various tax incentives may benefit you.*

Provided certain IRS requirements are met, conservation easement donors may:

- Claim a federal income tax deduction for the value of the conservation easement donation, which is the value of the development and other rights that were impacted by the donation, as determined by a qualified appraisal.
- The appraisal must be completed before the deduction is first claimed but no more than 60 days before the donation is completed. Therefore, an appraisal is not needed at the time of closing.
- The deduction may be up to 50% of the taxpayer’s adjusted gross income (AGI) on their federal income taxes for the year of the gift and for up to 15 carry forward years. Qualifying farmers and ranchers who donate a conservation easement may deduct up to 100% of their AGI.

**\*\*NOTE: Following passage of the Tax Cuts and Jobs Act of 2017, the IRS issued a proposed rule which would disallow federal income tax deductions for donated or partially donated conservation easements in New York. However, a final rule has not yet been issued. Please discuss how the proposed rule may affect you with your tax advisor. Easement donors are solely responsible for complying with current IRS regulations.**

The New York State Conservation Easement Tax Credit pays landowners whose land is restricted by a donated or partially donated conservation easement an annual refund of 25% of the combined local, county and school property taxes paid on that land, exclusive of the structures and improvements, up to \$5,000 per year.

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

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