

ISSUE PAPER SERIES

Conservation Easements

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NEW YORK STATE TUG HILL COMMISSION

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This paper was prepared in cooperation with Tug Hill Tomorrow Land Trust. It uses content, with the permission of the Land Trust Alliance, from their handbook entitled "The Conservation Easement Handbook."

The Tug Hill Commission's Technical Papers and Issue Papers are written to help local officials and citizens in the Tug Hill region and other rural parts of New York State. Technical papers provide guidance on procedures based on questions frequently received by the commission. Issue papers provide background on key issues facing the region without taking advocacy positions. Other papers are available from the Tug Hill Commission. Please call us or visit our website for more information.



Photo by Carl Heilman

TABLE OF CONTENTS

CONSERVATION EASEMENTS AND TUG HILL.....	1
WHAT IS A CONSERVATION EASEMENT?.....	1
WHY GRANT A CONSERVATION EASEMENT?.....	2
WHAT KIND OF PROPERTY CAN BE PROTECTED BY AN EASEMENT?.....	2
WHO CAN GRANT AN EASEMENT? TO WHOM CAN THEY GRANT IT?.....	2
HOW RESTRICTIVE IS AN EASEMENT?.....	3
MUST AN EASEMENT ALLOW PUBLIC ACCESS?.....	3
HOW CAN DONATING AN EASEMENT REDUCE A PROPERTY OWNER’S INCOME TAX?.....	3
HOW CAN A LANDOWNER OBTAIN A STATE INCOME TAX CREDIT?.....	4
WHAT IS THE FEDERAL CONSERVATION TAX DEDUCTION?.....	4
HOW CAN GRANTING AN EASEMENT REDUCE A PROPERTY OWNER’S ESTATE TAX?.....	5
CAN GRANTING AN EASEMENT REDUCE AN OWNER’S PROPERTY ASSESSMENT?.....	5
WHO HAS GRANTED CONSERVATION EASEMENTS ON THEIR LAND?.....	6

Conservation Easements and Tug Hill

As communities look ahead to managing and protecting those resource areas within their boundaries that residents hold as "special," a tool that is increasingly used is the conservation easement.

Conservation easements are especially suited to use in the Tug Hill region, where for over two decades residents have clearly stated that they want to see local, private protection of natural resources. Tug Hill already has over 60,000 acres of conservation easements. The New York State Department of Environmental Conservation (DEC) holds easements on Niagara Mohawk Power Corporation lands along the Salmon River in Oswego County, and in the East Branch of Fish Creek watershed in Lewis County. Most of the rest are held by Tug Hill Tomorrow Land Trust, a private, non-profit land trust created to hold conservation easements not held by federal, state, or local governments.

Conservation easements may be particularly attractive to Tug Hill landowners because their flexibility matches a range of private landowner objectives, to include protecting land that also may be used for timber production, hunting, fishing, farming, and other active uses.

Conservation easements may also be a valuable tool for towns and villages to use, such as is the case in the Trenton "Greenbelt," Oneida County, a joint venture of the Town of Trenton, private landowners, and Tug Hill Tomorrow Land Trust. The Greenbelt is a town asset that provides public recreation access along trails through private land protected by a conservation easement. The town maintains the trails and a parking and pavilion area located on adjacent town land.

On July 22, 1998, state legislation was signed that adds the Tug Hill region to the areas within which New York State is required to pay property taxes for the portion of the property value associated with a state-held conservation easement. This requirement does not apply to private land trusts that hold conservation easements, only those held by the State of New York. Passage of the legislation was due in great part to work done by the East Branch of Fish Creek Working Group. The working group, which worked for more than ten years to find ways to protect the East Branch of Fish Creek watershed, concluded that state-held conservation easements were the best way to protect water quality in the watershed while still allowing for timber production, hunting, fishing, trapping, and snowmobiling. The law is found in Chapter 419 of the Laws of 1998, which amends Section 533 of the Real Property Tax Law of the State of New York

In cases where easements are held by land trusts, landowners continue to pay 100% of their property taxes and then have the benefit of an annual income tax credit equal to 25% of their property tax bill as an incentive. The burden is on the state not on the local taxing jurisdictions.

What is a Conservation Easement?

A conservation easement is a legal agreement a property owner creates to restrict the type and amount of development that may take place on his or her property. Each easement's restrictions are tailored to the particular property's natural resource values and to the interests of the individual

Conservation Easements

owner.

To understand the easement concept, think of owning land as holding a bundle of rights. A landowner may sell or give away the whole bundle or just one or two of those rights. These may include, for example, the right to construct buildings, to subdivide the land, to restrict access, or to harvest timber. To give away certain rights while retaining others, a property owner grants an easement to an appropriate third party, such as a land trust, a public agency, or a historic preservation organization.

Easements often are called by different names, according to the resource they protect. Easements used to preserve an agricultural operation, for example, are termed agricultural or agricultural preservation easements. When the resources are primarily scenic, easements can bear that name. Another term for a conservation easement is conservation restriction. Whatever they are called, the concept is the same.

An easement runs with the land — that is, the original owner and all subsequent owners are bound by the restrictions of the easement. In NY, the easement is recorded with the county clerk, so that all future owners and lenders will learn about the restrictions when they obtain title reports.

Why Grant a Conservation Easement?

People grant conservation easements to protect their land or historic buildings from inappropriate development *while retaining private ownership*. By granting an easement in perpetuity, the owner may be assured that the resource values of his or her property will be protected indefinitely, no matter who the future owners are. Granting an easement can also yield tax savings, as discussed below.

What Kind of Property Can Be Protected by an Easement?

Any property with significant conservation or historic preservation values can be protected by an easement. This includes forests, wetlands, farms and ranches, endangered species habitat, beaches, scenic areas, historic areas, and more. Land conservation and historic preservation professionals can help landowners evaluate the relevant features of their property. Placement of the easement is required to provide some type of public benefit, such as an important scenic view, a key ecological function, the provision of public recreation trails, or other benefits.

Who Can Grant an Easement? To Whom Can They Grant It?

Any owner of property with conservation or historic resources may grant an easement. If the property belongs to more than one person, all owners must consent to granting an easement. If the property is mortgaged, the owner must obtain an agreement from the lender to subordinate its interests to those of the easement holder so that the easement cannot be extinguished in the event of foreclosure.

If an easement donor wishes to claim tax benefits for the gift, he or she must donate or sell it for less than fair market value to a public agency or to a conservation or historic preservation organization that qualifies as a public charity under Internal Revenue Code Section 501(c)(3). Most land trusts

Conservation Easements

and historic preservation organizations meet this criterion.

Holding an easement, however, is a great responsibility. A property owner should make sure that the recipient organization has the time and resources to carry out that responsibility. An organization that accepts the donation of an easement typically will ask the owner to make a contribution toward the costs of monitoring the easement in perpetuity or will establish a monitoring fund from other sources.

How Restrictive is an Easement?

An easement restricts development to the degree that is necessary to protect the significant values of that property. Sometimes this totally prohibits construction, sometimes it does not.

If the goal is to preserve a pristine natural area, for example, an easement may prohibit all construction, as well as activities that would alter the land's present natural condition. If the goal is to protect farm or ranch land, however, an easement may restrict subdivision and development while allowing for structures and activities necessary for and compatible with the agricultural operation. Even the most restrictive easements typically permit landowners to continue traditional uses of the land.

Must an Easement Allow Public Access?

Landowners who grant conservation easements generally make their own choice about whether to open their property to the public. Some landowners convey certain public access rights, such as allowing fishing or hiking in specified locations or permitting guided tours once a month. Others do not.

If an income tax deduction is to be claimed, however, some types of easements require access. If the easement is given for recreation or educational purposes, public access is required. For scenic easements, much of the property must be visible to the public, but physical access is not necessary. Access is generally not required for easements that protect agriculture, timber management, wildlife, plant habitat or natural lands.

How Can Donating an Easement Reduce a Property Owner's Income Tax?

The donation of a conservation easement is a tax-deductible charitable gift, provided that the easement is perpetual and is donated "exclusively for conservation purposes" to a qualified conservation organization or public agency. Internal Revenue Code 170(h) defines "conservation purposes" to include the following:

- the preservation of land areas for outdoor recreation by, or the education of, the general public
- the protection of relatively natural habitats of fish, wildlife, or plants, or similar ecosystems

Conservation Easements

- the preservation of open space — including farmland and forest land — for scenic enjoyment or pursuant to an adopted governmental conservation policy; in either case, such open space preservation must yield a significant public benefit
- the preservation of historically important land areas or buildings

To determine the value of the easement donation, the owner has the property appraised both at its fair market value without the easement restrictions and at its fair market value with the easement restrictions. The difference between these two appraised values is the tax deductible easement value. Detailed federal regulations govern these appraisals.

How Can a Landowner Obtain a State Income Tax Credit?

In 2006, New York State enacted a new conservation easement tax credit (CETC). The CETC offers taxpayers whose land is restricted by a conservation easement an annual New York State income tax credit of up to 25% of the school district, county, and town real estate taxes paid on the restricted land, up to an annual maximum of \$5,000 per taxpayer. Note that village, city and special assessments, such as for water, sewer, or fire protection, cannot be used to compute the credit.

Unlike a tax deduction, which is an adjustment to taxable income, a tax credit offsets a taxpayer's tax liability on a dollar-for-dollar basis. The CETC is a *refundable* income tax credit, which means that if a landowner's tax credit exceeds the amount he or she owes in state income taxes, the landowner gets a check for the difference.

The CETC applies only to perpetual, permanent conservation easements as defined in Article 49 of New York State Environmental Conservation Law. The land subject to the easement must be located in New York State, although the owner may live inside or outside New York State. Out-of-state landowners must file a particular form in order to receive their tax credit.

The easement must be held by a public or private conservation agency, and must serve to protect open space, biodiversity, or scenic, natural, agricultural, watershed, or historic preservation resources by limiting or restricting development, management, and/or use of the property. The easement must be filed with the DEC, and must comply with Section 170(h) of the Internal Revenue Code, i.e. it was wholly or partially donated to a public or private agency.

For more information about how a landowner goes about claiming the CETC, and about special conditions, such as multiple owners, land only partially covered by an easement, and more, contact the Land Trust Alliance's Northeast Regional Office by phone at 518-587-0774 or by email at northeast@lta.org. There is also additional information on DEC's website at www.dec.ny.gov/lands/26428.html, and on the Department of Taxation and Finance website at www.tax.ny.gov/pit/credits/conservation_easement_credit.htm.

What is the Federal Conservation Tax Deduction?

In 2015, Congress passed an enhanced federal tax incentive for conservation easement donations. Donated conservation easements can qualify as a charitable tax deduction on the donor's federal income tax return. First enacted temporarily in 2006, the tax incentive was made permanent in 2015

Conservation Easements

and increases the benefits to landowners by:

- Raising the deduction a donor can take for donating a conservation easement to 50%, from 30%, of his or her annual income;
- Extending the carry-forward period for a donor to take a tax deduction for a conservation agreement to 15 years from 5 years; and
- Allowing qualifying farmers and ranchers to deduct up to 100% of their income, increased from 50%.

For more information on the federal tax deduction, see:

<http://s3.amazonaws.com/landtrustalliance.org/ConservationEasementTaxIncentiveBrochure2016.pdf>

How Can Granting an Easement Reduce a Property Owner's Estate Tax?

Many heirs to large historic estates and to large tracts of open space — farms and ranches in particular — face monumental estate taxes. Even if the heirs wish to keep their property in the existing condition, federal estate tax is levied not on the value of the property for its existing use, but on its fair market value, usually the amount a developer or speculator would pay. The resulting estate tax can be so high that the heirs must sell the property to pay the taxes.

A conservation easement, however, often can reduce estate taxes. If the property owner has restricted the property by a perpetual conservation easement before his or her death, the property must be valued in the estate at its restricted value. To the extent that the restricted value is lower than the unrestricted value, the value of the estate will be less, and the estate will thus be subject to a lower estate tax.

Even if a property owner does not want to restrict the property during his or her lifetime, the owner can still specify in his or her will that a charitable gift of a conservation easement be made to a qualifying organization upon the owner's death. Assuming that the easement is properly structured, the value of the easement gift will be deducted from the estate, reducing the value on which estate taxes are levied. Again, a lower tax results.

Can Granting An Easement Reduce An Owner's Property Assessment?

Property assessment in our area is usually based on the property's fair market value according to current use. The actual amount of reduction on property assessment because of a conservation easement, if any, depends on many factors. Landowners can certainly exercise their right to grieve an assessment with their local assessor once the easement is placed. However, state law and the personal attitudes of local officials and assessors may influence or determine the decision to award

Conservation Easements

property tax relief to easement grantors.

For properties with conservation easements held by New York State, there is legislation that requires the state, in the Tug Hill region, to pay property taxes for the portion of the property value associated with a conservation easement. In this case, the state receives a separate bill for the portion of property taxes for which it is responsible.

Who Has Granted Conservation Easements On Their Land?

People who grant easements usually have a special tie to their land. It has been in their family for generations and has been managed with a strong sense of stewardship for the land and its natural resources. Most share a desire to permanently protect and enhance the natural, scenic, and cultural resources of the community. If a Tug Hill landowner is interested in investigating his or her options for protecting the conservation values of a property, Tug Hill Tomorrow Land Trust can help. To date, Tug Hill Tomorrow Land Trust has placed 18,741 acres under conservation easement. Tug Hill Tomorrow Land Trust offers a conservation easement program as well as conservation planning services and a non-binding land registry program for private landowners.

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