



A General Guide to Conservation Easement Transactions with the Columbia Land Conservancy

What is a conservation easement?

Conservation easements are legal agreements that allow landowners to permanently protect the conservation qualities and attributes of their properties without giving up ownership and the associated rights to live on, utilize, farm and otherwise enjoy the land. In a conservation easement transaction, a landowner donates or sells a significant portion of the development rights associated with his or her land to a qualified nonprofit land trust such as the Columbia Land Conservancy (CLC) or to a governmental entity. In exchange, in addition to the satisfaction of knowing their land will be permanently protected for future generations, the landowner may receive certain financial benefits, as described below.

Frequently asked questions:

- 1) *Will CLC own my land after it has been protected?* No. The property remains privately owned and can be sold or transferred, leased, and mortgaged. It can still be used for farming and forestry and any other uses not incompatible with the easement terms. Our staff is available to answer questions about what types of future uses might or might not be compatible with the easement.
- 2) *Will I still be able to build new structures?* Yes. Most conservation easements do not prohibit all development. A limited number of residential, agricultural and commercial dwellings and structures are typically allowed, including barns, recreational buildings, guest houses, farm stands, garages, storage sheds, swimming pools, etc. Specific areas may be designated as locations for possible future development. These areas are selected to minimize impact on the conservation resources being protected.
- 3) *Is public access required?* No. Each easement is tailored to meet the long-term goals of the landowner as well as to protect the natural resources on the property. Public access is not required. However, landowners may elect to establish a public trail or similar right of public access as part of their conservation easement, if they wish to do so.
- 4) *Will I still have to pay my property taxes?* Yes. However, while a conservation easement does not typically lower property taxes for Columbia County landowners, all landowners whose property is restricted by a donated or partially donated permanent conservation easement are eligible to receive an annual rebate from New York State via a tax credit for 25% of the property taxes paid on that land, up to \$5,000 per year. Landowners with conservation easements may still enroll eligible lands in New York State's agricultural or forestry "current use" programs, which provide a direct reduction in property taxes.
- 5) *Will my conservation easement discussions be kept confidential?* Yes. CLC holds all conversations with landowners regarding potential conservation easements in strict

confidence. We do not share any information about potential easements unless a landowner specifically asks us to, such as when federal or state funding would require us to seek municipal support for a particular project. Once a conservation easement is recorded with the County Clerk, however, it becomes a matter of public record. We feature stories about conservation successes in publications such as the CLC newsletter and on social media regularly, and landowners are encouraged to participate in these outreach activities.

- 6) *What is the land trust's role?* Only land trusts and other conservation or governmental entities are legally qualified to hold conservation easements. The conservation easement document specifies which activities are permitted on the property, and which are not, beginning on the day the easement document is recorded with the County Clerk. Thereafter, the land trust will monitor the easement property on a regular basis (often annually), to confirm that uses continue to conform to the easement terms, even as the land changes hands over time.

What are the financial benefits of protecting land with a conservation easement?

Conservation easements permanently extinguish some of the real estate rights associated with a given property. As such, they affect the property's value, and they themselves have a dollar value. The value of a conservation easement is generally defined as the difference between what the property is worth unprotected and its value after being protected. In order to determine this value, a certified New York State appraiser will conduct a comparative analysis that reviews recent and comparable sales in the general vicinity of the property, specifically looking at recent sales of unencumbered and protected lands. As a general rule, the more restrictive a conservation easement is (i.e. the more value that is given up), the higher the value of the easement, particularly when it comes to restricting further development.

Because conservation easements have a dollar value, they can be sold or donated. Easements can also be sold at a discounted price, in what is commonly referred to as a "bargain sale." In the case of a bargain sale, the landowner is directly compensated for a portion of the easement's value, and the remaining value is considered a charitable gift to the land trust. Selling an easement is considered a sale of a capital asset and is generally treated as a capital gain to the extent the proceeds exceed the landowner's basis in the property. There can therefore be financial incentives for contributing a conservation easement through a donation or bargain sale arrangement, in particular to offset or minimize potential capital gains taxes.

Selling a conservation easement:

In some cases, conservation easements can be purchased through what is called a Purchase of Development Rights program. Purchase of development rights programs will pay landowners in cash for the value of their development rights, generally through a grant award. Currently in New York State, grant funding is generally available for protection of viable working farms through the New York State Department of Agriculture and Markets Farmland Protection Implementation Grant Program. This grant program is highly competitive, and funding is primarily awarded to farmers who own and operate working farms. Some purchase of development rights funding may also be available for large and/or collaborative forestry projects through the federal Forest Legacy Program, and potentially for wetland conservation or other significant habitat protection projects.

Conveying a conservation easement by gift or bargain sale:

Tax Credit: A gift or bargain sale of a conservation easement will typically qualify the protected property for the New York State Conservation Easement Tax Credit, which will be available to all future owners of the protected property, as well. The New York State Conservation Easement Tax Credit provides anyone who owns land that is restricted by a conservation easement an annual refund of 25% of the property taxes paid on that land, up to \$5,000 per year, regardless of when the easement was recorded, provided that the easement was wholly or partially donated (to a land trust or a governmental agency). New York taxpayers will be able to claim this rebate when they file their state income tax returns. If you have no income tax liability in New York State, you can still file for the credit, which will be provided to you via check. As always, please rely on the counsel of your tax advisors to confirm or refine your understanding of these provisions. Additional benefits may also be available with respect to estate taxes and capital gains taxes; please consult your financial advisors.

Tax Deduction: The donation or partial donation of a conservation easement may be treated as a tax-deductible charitable contribution for income tax purposes if it meets the “qualified conservation contribution” requirements of the Internal Revenue Code Section 170(h), and Treas. Reg. § 1.170A-14. Current allowances for qualified conservation easement donations provide that landowners may deduct the value of the conservation easement against 50% of their adjusted gross income for up to 16 years, beginning the year the easement is donated. Qualified farmers may deduct the value of the easement gift against 100% of their adjusted gross income for up to 16 years. A recent rulemaking by the Internal Revenue Service has created uncertainty about the impact of the New York State Conservation Easement Tax Credit on the availability or the amount of a charitable deduction for a qualified conservation contribution. Please consult your tax and financial advisors for more information on the potential charitable contribution and, in particular, regarding the status and interpretation of the recent Internal Revenue Service rulemaking.

What are the steps to complete a conservation easement project?

Completing a conservation easement involves a number of specific activities, from initial discussions about goals to the final recording of the easement document. CLC’s Board of Trustees must approve the acceptance of every conservation easement proposal. In order to present a project for board approval, CLC works with the landowner to assess the property’s natural resources, identify areas of particular environmental sensitivity (such as stream corridors and wetlands), and agree on a proposed number of future home sites and subdivisions, if any.

Once a general plan for the land is agreed upon and CLC’s Board approves a land protection project, our staff will then work collaboratively with the landowner to complete the project. The specific steps will vary depending on the funding source(s) (if any) and associated requirements. Generally, purchase of development rights projects take longer to complete than donated easements, in part because they require additional steps and approvals.

Some steps common to all conservation easements include the following:

- Appraisal.
 - **Purchased Conservation Easements:** In the case of a purchased easement, CLC and/or its conservation partners will commission an appraisal for use in determining the amount a landowner might receive in cash at a closing. Given CLC’s limited resources and capacity, we request that landowners split the cost of this initial

- preliminary appraisal with us by 50%. However, if this expense is a hardship for a farmer applicant, we can discuss a fee waiver or a partial fee waiver.
- **Donated Conservation Easements:** In the case of donated easements for which an income tax deduction is sought, should such action be permissible, the IRS requires the landowner to obtain his or her own appraisal, which needs to meet specified standards and which must be reviewed by the land trust receiving the gift.
 - **Survey.** A professional land survey is needed to delineate exact property boundaries, and in some cases, the boundaries of allowable building areas. An existing survey may suffice, or if grant funding is available, CLC or its conservation partners may commission a new survey. In cases of donated easements when there is no existing survey, the landowner will be required to obtain a new survey.
 - **Conservation Easement Document.** CLC will draft a conservation easement document and provide it to the landowner and his/her attorney for review and discussion along with an associated conservation easement map.
 - **Title.** All liens, mortgages and encumbrances must be cleared or otherwise subordinated to the conservation easement.
 - **Baseline Documentation.** CLC will complete a report documenting the existing conditions on the property as of the date of closing. This report generally includes a series of maps, photographs, and verbal descriptions of the property's conservation values and existing improvements at the time the easement is executed.

At the closing, the landowner and CLC sign the conservation easement and associated Baseline Documentation Report, and other recording documents. Once the easement has been executed and all encumbrances subordinated or otherwise cleared, the conservation easement is recorded at the Columbia County Clerk's office and officially goes into effect.

What are the costs of completing a conservation easement?

Easement preparation expenses:

CLC is a non-profit, member-supported organization with a limited budget. Except when grant funding is available (or in situations of extreme and documented financial hardship) CLC will require reimbursement to cover its share of the costs of completing conservation easement projects. These costs generally range from \$4,000 to \$8,000, depending upon the complexity of the project. This estimate includes our staff time, legal review by our attorney, and other out-of-pocket expenses such as producing the baseline documentation, maps, title report, recording fees, etc. This reimbursement is separate from and in addition to expenses incurred by the landowner directly, which may include the cost of an appraisal, survey and legal or financial advice. For all easement transactions CLC strongly recommends that landowners obtain their own legal and financial counsel.

Note that for most purchase of development rights projects, landowners are not required to cover CLC's easement preparation expenses with the exception of shared upfront preliminary appraisal costs as outlined above, their own expenses such as legal representation, and certain recording and transfer fees, as most transactions costs are typically incorporated into the overall grant implementation.

Easement Stewardship and Legal Defense Fund:

For every conservation easement we hold, CLC assumes a legal responsibility to defend its terms and conditions in perpetuity. Among our many on-going obligations associated with holding conservation easements, these responsibilities include annual monitoring of the property, review of construction and subdivision plans, and legal defense of the easement provisions if necessary.

To ensure we have the resources necessary to steward and defend our conservation easements, CLC requests a contribution to its Easement Stewardship and Legal Defense Fund of \$15,000. Recognizing, however, that some landowners will be unable to pay that amount, the required payment is \$5,000 plus \$1,500 for each separate ownership unit permitted by the conservation easement. Recent case law suggests that contributions to this fund may be tax-deductible, but landowners are advised to rely on the counsel of their own tax advisors.

State (but not federal) purchase of development rights grants for farmland protection will generally provide a contribution towards CLC's Easement Stewardship and Legal Defense Fund on behalf of the landowner. When such funding is not available through a grant program, contributions are required by the landowner no later than the date of closing.

What are CLC's and my responsibilities once my property has been protected?

Our commitment to protecting properties does not end when an easement is recorded, as we are required and committed to uphold the terms of the easement. There are a number of obligations on the part of both the landowner and CLC to ensure a successful easement program. Perhaps the most important obligation that we have regarding conservation easement stewardship is developing good relationships with open communication and a mutual commitment to the ongoing protection of the land in accordance with the easement.

All CLC conservation easements allow for rights and uses that are retained by the landowner. Examples include the limited ability to divide a property, construct buildings, create or maintain trails, manage for timber, or farm the land. Every easement is unique, but all have a variety of different requirements. In many cases, prior consent by CLC is required before building structures or conducting a timber harvest. Often the landowner is required to submit plans to CLC describing the activity. We will review the plans to ensure the activity complies with the terms of the easement and if they are not in compliance we will work with the landowner to refine the plans.

Monitoring is a critical tool we use to ensure the continued protection of the natural resources and other conservation values of a property. Regular monitoring enables us to maintain positive working relationships with landowners, serving as an information resource and spotting potential problems early on. We currently monitor protected properties annually by plane and on the ground every other year. Landowners are always invited and encouraged to join us as we walk the land.

We strive to serve as a general conservation resource to owners of protected land and are always happy to answer questions. We encourage landowners to reach out to us before initiating any major projects on their properties, and we are always available to review plans and discuss land management practices. We believe that collaborative relationships between people and the land are the key to long term conservation. We look forward to partnering with you.

For more information about working with CLC to protect your land with a conservation easement, contact our office at 518.392.5252 or see our website at clctrust.org.