



saratoga
PLAN

Preserving Land and Nature

farmland conservation process

a step-by-step checklist for conserving farmland

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**EVERY PROPERTY IS DIFFERENT.
EVERY LANDOWNER'S SITUATION IS UNIQUE.
EVERY CONSERVATION PROJECT HAS ITS IDIOSYNCRASIES.**

While acknowledging the above, and knowing that something extraordinary crops up during nearly every project, it is not possible to detail how every project will unfold. This outline attempts to list the probable steps in the farmland conservation process.

Landowners need to know what they are considering and can use this outline to follow along as their project progresses. Conserving farmland is a lengthy process. From the landowner's vantage, it seems like there are stages of hurry up and then stages of waiting...repeat...again. In between, things are happening and other people are working to move the project along. Since projects can take a few years from concept to completion, this guide will hopefully help you understand where you are in the process.

The conservation easement process is broken up into 5 phases:



The timeline above is a rough estimate of how long each phase takes. Some projects have title issues or boundary encroachments that need to be cleared before the easement can proceed. Sometimes approvals take longer or need negotiation. Of course, more parties involved in the transaction means a little more time will be needed along the way to allow time for everyone to review documents. **Although the steps are listed in rough chronological order, some steps will be happening concurrently.**

1

exploratory phase

Colors indicate who takes the lead for that step:




Landowner




Conservation Professional





Landowner and Conservation Professional collaborate


 **EDUCATE** yourself. Attend workshops, read fact sheets, look it up online, talk to other landowners who have gone through the process of conserving their farmland, discuss it with your family or business partner, seek legal and financial advice from experts, check town comprehensive or farmland conservation plans, if your municipality has one. Conservation easements are permanent restrictions on land, so the process warrants thorough research and careful consideration. Our goal is no surprises later!

 **CONSULT** with land conservation professionals to understand your options fully. Include all potentially interested family members or other parties so that everyone fully understands the restrictions of farmland conservation easements and the conservation process. There is no fee for consultations and your inquiry and information are completely confidential. The conservation professional will facilitate your project and guide you through the process. Staff at Saratoga PLAN, a non-profit conservation organization, and the Saratoga County Planning Department are the farmland conservation experts covering Saratoga County; the two agencies work together on farmland conservation projects, helping landowners explore their options and preparing funding applications, and managing projects once funded.

Once funded, a lead conservation professional will become the Project Manager and will be compensated for shepherding your project through the due diligence and settlement phases. Only qualified conservation organizations and government entities can hold conservation easements; in Saratoga County, some towns are willing to hold conservation easements and others are not. In the end, the easement holder's job will be to monitor and enforce the restrictions in the easement so it is in their interest, too, to make sure the project is done right and all parties fully understand all facets of the project.

 **PROPERTY EVALUATION.** Show your land to the conservation professionals. Land conservation professionals will want to walk your property and map your land using aerial photos, soils data, topographic forms and features, wetlands and surface waters, fields and woods, tax parcel info, landscape context (other conserved lands in the vicinity, neighboring farms, drainage, contiguous residential lots or commercial uses), road frontage and access and traffic load, etc. Explain everything you can think of regarding ownership, use, history, succession plan, leases, rights-of-way, mortgages, liens, and so forth.

 **PLANNING.** Work with your land conservation professional to formulate the terms of a conservation easement, site plan, and budget.

 **CONSERVATION PRACTICES.** Contact the Soil and Water Conservation District to send a copy of your "Cooperator" file, if you have one, to the conservation professional working with you. The file contains information on conservation

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practices that have been implemented, such as if and where ponds or tiling have been installed on your fields, etc. The Soil and Water Conservation District needs your approval to release any information on your property to your conservation professional.

- ☐ **MORTGAGE.** If there is a mortgage on the property, contact the appropriate bank representative for a preliminary discussion regarding whether the bank will subordinate the mortgage to a conservation easement or if they will require a full or partial payoff of the mortgage.
- ☐ **VALUE.** If knowing the precise value of the conservation easement is necessary before deciding whether to proceed, enlist the services of a real estate appraiser, one who is qualified to value conservation easements and has experience valuing agricultural land. If you are willing to proceed with an estimate, the conservation professional working with you will share a probable range of value, based on other similar conservation easements that closed recently.
- ☐ **BUDGET.** Ask your conservation professional to prepare low and high budgets of your conservation easement value and all transactional costs.
- ☐ **FINANCING OPTIONS.** Decide whether funding will be needed or if you will be fully financing the project. Landowners can fully donate, partially donate (bargain sell), or, in rare instances, receive full compensation for their conservation easement (aka development rights). There will also be transactional costs for legal fee, title search and title insurance, boundary survey, phase 1 environmental site assessment, property baseline report, project management, and a fund for ongoing easement stewardship. Outside funding sources can be sought for conservation easements and/or transactional costs. It is typical that the landowner contributes something, not necessarily cash, toward the project via a bargain sale, i.e. making a partial donation by taking less on the dollar than full value.
- ☐ **FUNDING OPTIONS.** If funding will be needed for the conservation easement and/or the transactional costs, determine if the project will likely be eligible and competitive for funding and which funding sources will work best. Outside funding sources include federal, state, county, and town land protection programs, private foundations, and fundraising campaigns. Sometimes multiple sources match up with one another to complete a fuller compensation package for the project.
- ☐ **ADVISORS.** Consult with your attorney, financial advisor, tax preparer, family members, business partners, or anyone else whose counsel will be valuable to you.
- ☐ **FULLY-INFORMED COMMITMENT.** Before advancing to the application phase, make sure that all your questions have been answered and you are clear that you want to make a commitment to proceed. Your conservation professional will be investing considerable time in helping you through the conservation process so you want to make sure you are ready to commit. Other landowners will remain on the waiting list while your project is being managed and funded. We don't want to waste anyone's time or chances.



.....
after exploring whether
an agricultural
conservation easement
is right for you, and
you decide to proceed,
turn the page to
learn what's next. ➞



2

application phase

Colors indicate who takes the lead for that step:



Landowner



Conservation Professional



Landowner and Conservation Professional collaborate

- ☐ **PRE-APPLICATION.** Prepare a pre-application for funding. The pre-application will provide basic information about the property and documents your commitment to conserving it.
- ☐ **PUBLIC BENEFITS.** Document the public benefits of conserving the property and how its conservation aligns with adopted public policies.
- ☐ **RANKING.** Pre-applications are ranked by the Saratoga County Agriculture and Farmland Protection Board.
- ☐ **APPROVAL TO PROCEED.** Seek approval to proceed from Saratoga PLAN's Board of Directors, when PLAN is involved in managing the project or holding the conservation easement.
- ☐ **MUNICIPAL ENDORSEMENT.** If funding is being sought from a public source, seek an endorsement from the town board and/or county Board of Supervisors, as needed.
- ☐ **APPLICATION.** Apply for funding program(s). It takes several months to compile an application.





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due diligence phase

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Landowner



Conservation Professional



Landowner and Conservation Professional collaborate

- ☐ **AWARD CONTRACT.** If the project is awarded funding, the Project Manager will receive notice and eventually a contract from the funding agency. There can be a gap of several months between notice and contract.
- ☐ **PROJECT CONTRACT.** Contract with the Project Manager for services and eventual donation/bargain sale/sale of conservation easement. Abide by the terms of your eventual conservation easement during the due diligence phase of the project.
- ☐ **TITLE SEARCH AND TITLE INSURANCE COMMITMENT.** Project Manager will enlist a title search company to research the title, including any easements, ROWs, liens, taxes due, or other title defects. Propose a cure for any title defects that may negatively impact future agricultural operations. If there is a mortgage, have the bank sign agreement to subordinate the mortgage to the conservation easement.
- ☐ **SURVEY.** Project Manager will solicit requests for quotes from local surveyors for the boundaries and any special use areas designated within the easement and contract with the selected surveyor.
- ☐ **PHASE 1 ENVIRONMENTAL SITE ASSESSMENT.** Project Manager will contract with an environmental investigation firm to assess the property, through published records and a site visit, for hazardous materials.
- ☐ **CONSERVATION PLAN.** Staff from the Saratoga County Soil and Water Conservation District and/or Natural Resources Conservation Service prepare a Conservation Plan for your property.
- ☐ **APPRAISAL.** Project Manager will engage the services of an appraiser qualified to determine fair market values of agricultural properties as both unrestricted and restricted by a conservation easement. The value of the conservation easement will be the difference between the unrestricted and restricted values.
- ☐ **FINAL DOCUMENTS.** Work with Project Manager and your attorney to update budget, conservation easement, and title report.
- ☐ **PROPERTY BASELINE DOCUMENTATION REPORT.** Project Manager will write a description of property, prepare multiple maps depicting the property's features, and take a series of photos from vantage positions for documenting the property's conditions at the initiation of the conservation easement. This documentation will be used each time the easement holder visits the property to compare and document any changes over time. The Project Manager and the landowner(s) both sign the baseline documentation report certifying that the baseline report accurately reflects the condition of the property at the start of the easement.
- ☐ **FINAL PROJECT PACKAGE.** Submit final project package and secure needed final approvals from all funding sources and Saratoga PLAN's Board of Directors in order to close.

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settlement phase

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Landowner



Conservation Professional



Landowner and Conservation Professional collaborate

- ☐ **CLOSING.** Once Project Manager has received all monies, close on project by signing conservation easement and baseline document. Pay consideration and all transaction costs.
- ☐ **FILING.** Record conservation easement and survey at Saratoga County Clerk's office.
- ☐ **REGISTRATION.** Register conservation easement with New York State Department of Environmental Conservation.

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stewardship phase

- ☐ **FINAL BASELINE REPORT.** Compile all final documents and assemble 3 copies of the baseline document. Give one copy of the Baseline Documentation Report to the landowner, maintain one copy in easement holder's property stewardship files.
- ☐ **ARCHIVES.** Store original Baseline Documentation Report in climate-controlled off-site archives.
- ☐ **FILE DATA.** Update master spreadsheet for portfolio and GIS of conserved properties.
- ☐ **NOTIFICATIONS.** Notify town and county that conservation easement has closed.
- ☐ **APPRAISAL.** If you intend to claim a charitable deduction for any portion of the easement value you donated, you need to get an independent appraisal before filing your income taxes for that year. The appraisal must be done by an appraiser qualified to appraise agricultural properties and conservation easements. You will also need to complete IRS form 8283 and submit the form signed by the appraiser, along with the appraisal report, to Saratoga PLAN. Give us enough time to review both before your taxes are due. We can provide more information on this step at the time.

- ☐ **COMMUNICATIONS.** Once the conservation easement is in place on the land, the easement holder will contact the landowner at least once a year to discuss any changes in ownership or any changes to the property being contemplated. Landowner will contact easement holder when contemplating a change to property and follow proper notification and/or approval process according to conservation easement.
- ☐ **SITE VISITS.** The easement holder will visit the property and walk it. The easement holder will compare current conditions of the property against the Baseline Documentation Report and document any changes, updating the Baseline Documentation Report when needed.
- ☐ **VIOLATIONS.** If there are any changes on the property that violate the terms of the conservation easement, the easement holder will notify the landowner and work to resolve the issue. If the landowner does not remedy the violation, the easement holder will utilize legal channels to resolve the violation.
- ☐ **PROPERTY TRANSFERS.** If the property is changing hands in the future, the easement will be referenced in the new deed and the easement holder requests to meet with the new owners so they fully understand what the terms of the conservation easement are and the stewardship role of the easement holder.





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FOR MORE INFORMATION ON HOW YOU OR YOUR
COMMUNITY CAN CONSERVE LAND

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