

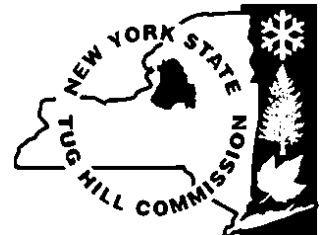
# **Conservation Easements**

**March 2003**

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## **TUG HILL COMMISSION ISSUE PAPER SERIES**

TUG HILL COMMISSION  
Dulles State Office Building  
317 Washington Street  
Watertown, New York 13601-3782  
315-785-2380/2570 or 1-888-785-2380 fax: 315-785-2574



**Email: [tughill@tughill.org](mailto:tughill@tughill.org) Website: <http://www.tughill.org>**

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For more information on conservation easements in the Tug Hill region, contact Tug Hill Tomorrow Land Trust, at P.O. Box 6063, Watertown, New York 13601-6063, 315-779-8240, [thtomorr@northnet.org](mailto:thtomorr@northnet.org), or contact the Tug Hill Commission.

This issue paper is a reprint with the permission of the Land Trust Alliance from their handbook entitled "The Conservation Easement Handbook." This handbook is available from the Alliance at 1331 H St NW, Suite 400, Washington, D.C. 20005-4734; Phone: (202) 638-4725; Fax: (202) 638-4730, [www.lta.org](http://www.lta.org), [lta@lta.org](mailto:lta@lta.org).

Additional copies of this paper are available at no charge by contacting the Tug Hill Commission at the address or phone or fax number above.

The Tug Hill Commission *Technical and Issue Paper Series* are designed to help local officials and citizens in the Tug Hill region and other rural parts of New York State. The *Technical Paper Series* provides guidance on procedures based on questions frequently received by the Commission. The *Issue Paper Series* provides background on key issues facing the region without taking advocacy positions. Other papers in each series are available from the Tug Hill Commission at the address and

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## **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 at least twenty years residents have clearly stated that they want to see local, private protection of natural resources. Tug Hill already has several thousand acres of conservation easements. The State of New York Department of Environmental Conservation holds most of these on Niagara Mohawk Power Corporation lands along the Salmon River in Oswego 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 well suited to Tug Hill because their flexibility matches a range of private landowner objectives that may well 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.

On July 22, 1998, State legislation was signed that adds the Tug Hill region to the areas within which the State is required to pay property taxes for the portion of the property value associated with a state-held conservation easement. [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.] Passage of the legislation was due in great part to work done by the East Branch of Fish Creek Working Group. The Working Group was initially formed in 1994 to find locally compatible ways to protect about half of the East Branch of Fish Creek watershed. Early in the process of discussing alternatives, the Working Group concluded that conservation easements would be the best way to accomplish the goal of protecting water quality while still allowing for timber production, hunting, fishing, trapping, and snowmobiling.

In June of 2002, The Nature Conservancy purchased the entire 45,000 acres under consideration, then resold approximately 30,000 acres under the protection of a conservation easement to a private timber management organization. The Nature Conservancy anticipates transferring the 30,000-acre conservation easement, along with approximately 1,350 acres of land along portions of the East Branch of Fish Creek, to the State. The Nature Conservancy will also convey a conservation easement to the State on its remaining ownership of some 14,000 acres. The Nature Conservancy anticipates this transfer to occur sometime in 2003. The easements generally prohibit subdivision, specify public recreation access rights on certain portions of the property, and secure snowmobile trail corridors these 45,000 acres of private land and State land while maintaining traditional leased usage and forest management activity.

## **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 and to the interests of the individual 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. The easement is recorded at the county or town records office [in New York State, 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 relative features of their property.

## **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 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 doesn't.

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 wildlife or 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
- 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 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 Tax?**

Property tax assessment usually is based on the property's market value, which reflects the property's development potential. If a conservation easement reduces the development potential of the property, it may reduce the level of assessment and the amount of the owner's property taxes. The actual amount of reduction, if any, depends on many factors. State law and the personal attitudes of local officials and assessors may influence or determine the decision to award property tax relief to easement grantors.

For properties with conservation easements held by the 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.

## **Who Has Granted Conservation Easements On Their Land?**

The 2000 National Land Trust Census found that local and regional land trusts have protected more than 6.2 million acres of open space. People who grant easement 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. Tug Hill Tomorrow offers a conservation easement program as well as conservation planning services and a non-binding land registry program for private landowners. For more information, contact:

Tug Hill Tomorrow Land Trust  
P.O. Box 6063  
Watertown, NY 13601  
Phone: (315) 779-8240  
E-mail: [thtomorr@northnet.org](mailto:thtomorr@northnet.org)

To obtain information about land trusts outside the Tug Hill Region, landowners should contact the Land Trust Alliance.

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Phone: (202) 638-4725; Fax: (202) 638-4730

[www.lta.org](http://www.lta.org), [lta@lta.org](mailto:lta@lta.org)

or from the Land Trust Alliance's Northeast Program:  
110 Spring Street  
Saratoga Springs, NY 12866-0792  
Phone: (518)587-0774 Fax (518)587-6467  
[ltane@lta.org](mailto:ltane@lta.org)