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## PRE-APPLICATION FREQUENTLY ASKED QUESTIONS (FAQ)

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*Q: Question #26 asks me to describe how protecting my land will buffer and enhance important public natural areas. What types of natural areas do you mean? I have a wood lot next to my property does that count?*

**A:** We are looking for natural areas that are open to the **public** which can be buffered by protected farmland. For instance a large public nature preserve like the Cook Memorial Forest, Sterling Nature Center, or other state or federal lands; public trails; public waterways and boat launches; public parks, etc.

*Q: I have heard from farmers that applied in the past that someone from the State will come out to investigate my farm. Is that true?*

**A:** A representative from Ag & Markets will **drive by** your farmland and farmstead in order to become familiar with your farm and the general area that it is located in when they are evaluating applications that have been sent to them. So, if you are chosen by NYALT to prepare and submit a State application (after you complete the pre-application for Cayuga County) then during the course of their review, the State will send a staff person out to drive past your farm and possibly take some photos. They will not come on to your property.

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## GENERAL PURCHASE OF DEVELOPMENT RIGHTS (PDR) FAQs

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*Q: What does PDR stand for?*

**A:** PDR stands for Purchase of Development Rights. This is the type of conservation transaction wherein a landowner receives compensation for the conservation easement. It is often used for protecting farmland.

*Q: What is a conservation easement?*

**A:** A conservation easement is a legal agreement between you and a land trust organization or government entity. It is tied to the land in perpetuity. Future owners will be bound by the terms of the conservation easement that you have placed on your land. The conservation easement is recorded in the county's land records and is registered with the NYS Department of Environmental Conservation.

*Q: Can a conservation easement ever be undone?*

**A:** Conservation easements are permanent legal restrictions on your land. They stick with the land regardless of who owns it in the future.

*Q: Does conserving my land mean that I no longer own it?*

**A:** No, if you sign an ongoing legal agreement (a conservation easement), you can continue to own and manage your land, in accordance to the restrictions you have specified. You can lease out your land, pass it on to your heirs, or sell it in the future as you wish.

*Q: Who can hold a conservation easement?*

**A:** Currently, the only entities permitted to hold conservation easements where the purchase of the development rights of the land was funded by the New York State Department of Agriculture & Markets is: a not-for-profit land trust organization, County Soil & Water Conservation District, County government or a Town government.

*Q: What are the responsibilities of a land trust or government holding a conservation easement?*

**A:** The entity holding the conservation easement, whether a not-for-profit conservation organization or government body, agrees to uphold the terms and restrictions of the conservation easement in perpetuity. The easement holder will work with current and all future landowners to make sure they understand and are following the easement. The easement holder will communicate regularly with the landowner, visit and walk the property one or more times a year, maintain comprehensive documentation of the property's condition through descriptions, photos and maps, note all changes in the property over time compared to conditions at the outset of the easement, approve certain actions or changes allowed by the easement, enforce the terms of the easement by requiring correction of violations or taking legal action if easement violations are not corrected.

*Q: Does conserving my land with a conservation easement affect my estate if I still own the land when I die?*

**A:** The conservation easement will stay with the land, regardless of how it is passed on in your estate. You can also donate a conservation easement on your land as a bequest through your will, or your heirs can choose to donate a conservation easement within a short window after you pass. If you or your heirs donate a conservation easement on your land, the value of your land (not structures) may be able to be reduced, for estate tax calculations, by an additional 40% beyond its reduction in value due to the easement restrictions. See Section 2031(c) of the IRS tax code for the details on the estate tax reduction for easement donations.

*Q: Can I take out a mortgage on my land if it has a conservation easement on it?*

**A:** You are free to take out mortgages on land under easement. The lender, through a title search, will be aware that the land has a perpetual conservation easement on it. If the land has a mortgage on it before a conservation easement is placed on it, the mortgage must be paid off or the lender must agree to subordinate its interest to the conservation easement, ensuring that it cannot be challenged.

*Q: What happens if the holder of the conservation easement ceases to exist?*

**A:** If the conservation organization or municipality ceases to exist, a qualified not-for-profit conservation organization with a similar mission or an alternative government body will assume the responsibilities of holding the conservation easement. The process for this transfer is typically included in the conservation easement which is then recorded with the County Clerk's office as a legal deed restriction on the land.

*Q: If I put an agricultural conservation easement on my land, how can I ensure that the land will remain actively farmed?*

**A:** It is nearly impossible to have 100% certainty that the land will be farmed at all times. For example, a landowner in the future may encounter health or financial problems that lead to retirement, or they may transfer the land to a non-farming heir. What a conservation easement will do, though, is to make sure that nothing happens to the land that prevents it from being farmed in the future. One way that landowners have dealt with this issue is to include a clause in their conservation easement that requires owners to transfer it within the family or to a bona fide farmer. If the landowner is unable to do so, they may sell it to the organization holding the easement at its conservation value (pending the mutual agreement of both parties); the organization can then seek a bona fide farmer to own the land. This type of clause within an easement is called an Option to Purchase at Agricultural Value (OPAV).

*Q: What kind of restrictions will be placed on the use and development of my land if I put a conservation easement on it?*

**A:** The restrictions described in a conservation easement will depend on the purposes of the easement and what you are trying to protect with it. Some rights may be retained by the landowner, some may require notice and/or approval by the easement holder, and some may be outright prohibited. The easement will be tailored to your property. Often, the amount of future development and subdivision, if any, for residential or commercial uses on the property will be eliminated or severely restricted. Conservation easements designed for agricultural purposes will allow farming, associated outbuildings, and ponds. In addition, the following uses may be allowed: forest management and timbering, hunting, fishing, hiking, cross-country skiing, snowmobiling and other noncommercial recreational activities. Maintenance of wooded buffers to streams and ponds may be required. If there is a residential area of the property included in the easement, the easement will typically be very permissive within this area and accommodate all sorts of ordinary residential functions.

*Q: Will the public have access to my land if I conserve it with an agricultural conservation easement?*

**A:** This is one of many issues that will be worked out between the easement holder and the landowner when the language for the conservation easement (deed restriction document) is being developed. For instance, the easement holder and landowner may want to provide for limited public access for a trail or waterside access that does not interfere with the primary function of the land as a working farm. Even if a public access use is not conceivable today, it is common for conservation easements to include a provision that landowners have the right, but not the obligation, to permit public access in the future if they desire, so as not to preclude this option in case a future landowner wishes to allow public access.

*Q: Will I need to get a lawyer in order to conserve my land?*

**A:** In almost all cases, the answer is yes. The land trust organization or government entity that will hold the easement will have its own legal representation for all conservation transactions, and you should, too.

*Q: How long does it take to complete a conservation transaction?*

**A:** As little as six months or as long as three to four years from the time the decision is made. Projects that take a long time to complete usually involve title complications that need to be resolved or funding program delays that require multiple layers of approvals and negotiations.

*Q: How much will it cost me to conserve my land?*

**A:** Land conservation transactions are expensive. Transaction costs include such things as surveys, legal fees, title searches and insurance, appraisals, and property documentation. The land trust organization or government entity that will hold the easement will expend significant staff time in managing your project throughout the entire process, and must also receive a contribution to a Stewardship Fund, which ensures that they can uphold their land-owning or easement-holding responsibilities in perpetuity. Most of these costs are covered in full or in part if you apply for and are awarded funding for this type of project from NYS; however there are still out of pocket conservation transaction costs to the landowner that typically range from \$20,000 to \$70,000, depending on the size and complexity of the project. Landowners should work closely with the land trust organization or government entity that will hold the easement to develop a realistic budget for the project that clearly identifies out of pocket costs to the landowner.

*Q: What is a bargain sale?*

**A:** A bargain sale means that a landowner receives some compensation but accepts less than the appraised full market value for their land or conservation easement. That is why it is referred to as a “bargain sale.” It is likely that the partial compensation is subject to the same rules as full compensation (such as capital gains tax liability) and the partial donation is subject to the same tax benefits as full donations (such as charitable deductions on income taxes).

*Q: How is the value of the land or conservation easement determined?*

**A:** The fair market value of the land or conservation easement is determined by a qualified appraiser. The appraiser will calculate the fair market value based on a determination of the highest and best and most likely use of the land and comparisons of other recent transactions of similar properties in the vicinity. For conservation easements, the appraiser will subtract the appraised value of the land with the easement from the value of the land before the easement; the difference is the value of the conservation easement or development rights that have been removed.

*Q: Will I know the value of my land or conservation easement before I enter into an agreement to conserve my land?*

**A:** Landowners who wish to know with certainty the value of their easement prior to entering a conservation agreement need to invest in an appraisal at their own expense. Many times an appraiser can be contracted for a two-phase valuation – an initial determination of value for a partial fee and, if you decide to proceed, a full appraisal report for the balance of the normal fee.

*Q: Are there any tax benefits for donating land or conservation easements?*

**A:** Yes, there can be tax benefits in terms of federal and state income taxes, property taxes, and estate taxes which favor conservation donors under most circumstances.

*Q: Can I claim a charitable deduction on my federal and state income taxes for the value of the land or conservation easement if I donate it fully or partially?*

**A:** Most landowners can claim a charitable deduction on their federal and state income tax returns for the value of a full or partial donation of land or a conservation easement. To be considered a charitable donation, the easement must meet the requirements of Section 170(h) of the IRS tax code. The basic federal income tax law permits taxpayers to claim charitable donations of up to 30% of their adjusted gross income in any one year. If the easement value is not used up, filers could continue to claim the charitable deduction for up to an additional five years of tax returns.

*Q: Will I have to pay property taxes on my land if it is conserved? What will happen to the town's assessed value of my land?*

**A:** Yes. The responsibility to pay taxes remains with the property owner until it is transferred to a new owner. Similarly, as the property owner, you retain the right and responsibility of meeting with the local Assessor to discuss any factors that may impact the value of your land, including a conservation easement and if you are not satisfied with the outcome, you may access the grievance process. Exemption eligibility generally will not be impacted by the conservation easement, however specific questions about exemptions should be discussed with the local assessor.

*Q: Will I have to pay federal and state capital gains taxes for the compensation I receive for selling land or a conservation easement?*

**A:** Probably. Determining capital gains requirements can get a little tricky, depending on the basis of the property, or the value when you acquired it. For easements, which reflect only a portion of the total value of the property, capital gains tax liability needs to be carefully calculated. Your financial advisor or tax preparer can help you determine if and how much to expect to pay in capital gains taxes. You may be able to defer capital gains tax payments to the future if you invest the compensation you receive in a commercial property (like additional income-producing farmland) within a period of time. This type of transaction is known as a 1031 "like-kind exchange." You will want to retain an attorney versed in like-kind exchanges to ensure that the transactions are properly executed for a legitimate like-kind exchange.

*Q: What is the income tax credit for conservation easements?*

**A:** New York State offers an income tax credit as an incentive for landowners who have donated a conservation easement on their land. The tax credit is available when a conservation easement has been fully donated or even for bargain sales. Essentially, the tax credit works as an annual rebate for 25% of your county, town, village, and school taxes, up to a maximum of \$5,000. It applies only to the taxes you pay on your land under conservation easement (not to improvements). As long as this tax law remains in effect, the tax credit can be claimed by future landowners of the property who were not the original easement donors. The tax credit is even applicable for out-of-state owners who pay no NYS income tax. This is how it works: You donate a conservation easement, fully or partially. The land trust organization or government entity holding the easement registers your conservation easement with NYS DEC and provides you with a registration number. You pay your school, town and county property taxes as always (this program does not harm the local tax base). You calculate the portion of your property taxes that is attributed to the land, not the improvements. When filing your NYS income taxes, you complete form IT-242 and receive a rebate from the state for 25% of the local taxes you paid on the land portion of your real estate.

**IMPORTANT!** Cayuga County Department of Planning & Economic Development staff are not qualified to offer legal, tax, or financial advice. The information provided in this FAQ sheet is general in nature and is intended as a tool to assist landowners. It is provided with the understanding that the Cayuga County Department of Planning & Economic Development is not engaged in rendering legal, accounting, tax or other counsel and should not be relied on as such. Every parcel of land and every landowner are unique. Property owners are urged to consult with their own legal, tax, accounting, and financial professional advisors to determine if the information provided by herein applies to their particular situation.