

## **PRE-APPLICATION FREQUENTLY ASKED QUESTIONS (FAQ)**

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**Q: What is the process to submit a pre-application and receive state funding?**

**A:** The pre-application has been prepared by the Cayuga County Agriculture & Farmland Protection Board (AFPB) in response to the interest from local farmers in the State's Farmland Protection Implementation Grants (FPIG) Program. Once pre-applications have been received, members of the Cayuga County AFPB will review and score each farm project using criteria developed by the Board that aligns with the State's scoring criteria. Applicants will be required to meet with County Planning staff briefly to identify both the Farmstead Area (agricultural buildings and area for future expansion) and any areas for Exclusion on a map in order to move on to the AFPB review. The AFPB will utilize the scoring process and other relevant information to select one or more farm projects to receive the Board's endorsement for the FPIG program and to move on to the next stage of application. Land trusts in CNY like the New York Agricultural Land Trust (NYALT) and the Finger Lakes Land Trust (FLLT) will review copies of AFPB supported pre-applications and determine which farms they would like to work with. The land trust will then contact property owners directly to prepare the final application to the State

**Q: Are there eligibility requirements for submitting a pre-application?**

**A:** Yes. Beginning in 2008, the AFPB began requiring that all landowners applying for State funding for farmland protection MUST have completed a Tier 1 and Tier 2 worksheet in the State's Agricultural Environmental Management (AEM) Program in order to be eligible. The AFPB stands behind this decision today and maintains this eligibility requirement for landowners. The Cayuga County Soil and Water Conservation District provides Tier 1 and Tier 2 AEM services at no cost to the landowner. Please contact the District at (315) 252-4171 to go through this process prior to submission of the pre-application. CCPED staff will verify with CCSWCD staff that all applicants have completed both a Tier 1 and a Tier 2 worksheet. The AFPB also requires that all applicable property taxes (county, town, school, etc.) are current (paid in full or in good standing in a payment plan with the county) on all parcels listed in this pre-application in order for the applicant to be eligible for funding. CCPED staff will verify this information with the County Treasurer's Office.

**Q: Will I need to fill out a new pre-application every year?**

**A:** No, this year County Planning has implemented a new process for submitting pre-applications. Farmers only need to submit a pre-application once during the open application period. Each application will be scored by County Planning based on the selection criteria and presented to the County AFPB for endorsement. A "pool" of endorsed applications will be created that area land trusts can select from as funding from the State becomes available. If you aren't selected in the first year but were endorsed by the County AFPB to be part of the applicant "pool", you do not need to reapply. The county will however send out a form to the endorsed farms annually asking for any updates to their applications (e.g. parcels purchased or sold, change in farm type/operation, etc.). The county will hold an annual round for pre-applications but only for farms that have never applied before.

**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:** No one from the State (NYS Ag & Markets or any other agency) will visit your farm as part of the application process for PDR funding. However, if you are chosen by a land trust and they want to prepare and submit a State application (after you complete the pre-application for Cayuga County) then during the course of their review, staff from the land trust will schedule a time to come out to your farm to meet with you and other members of the farm ownership to discuss details of the State application, learn more about your farm and take some photos.

## 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: 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: 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: 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 12 or 18 months or as long as 3 to 4 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: 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: 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: 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: 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.

### **Useful Links**

Below are some additional useful links for anyone looking to protect farmland in Cayuga County.

#### **Cayuga County Soil and Water Conservation District**

Agricultural Environmental Management (AEM) <http://www.cayugaswcd.org/agricultural-environmental-management-aem.html>

Cayuga County Farm Service Agency (FSA) Office <https://offices.sc.egov.usda.gov/locator/app>

#### **Land Trusts**

New York Agricultural Land Trust (NYALT) <https://www.nyalt.org/>

Finger Lakes Land Trust <https://www.fllt.org/>

#### **New York State Department of Agriculture & Markets (NYSDAM)**

Farmland Protection Program <https://agriculture.ny.gov/land-and-water/farmland-protection>

NYSDAM Model Agricultural Conservation Easement

<http://www.cayugacounty.us/DocumentCenter/View/2933/Model-Agricultural-Conservation-Easement-PDF?bidId=>

**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.