



Conserving the land, protecting our future.

Land Conservation in Dutchess County:

A Guide for the Land Owner

“We do not inherit the land from our ancestors, we borrow it from our children.”

American Indian Proverb

What land conservation means

When a parcel of land is formally put into conservation it means the land will be protected from development in perpetuity. There are several ways in which a land owner can cause their land to be conserved, and in many communities there are land trusts whose sole purpose is to help the land owner make the best arrangement for him or herself and the community and to commit to good stewardship of the land in perpetuity. This guide will explain the different ways that land can be put into conservation and explain the benefits to the individual land owner of the different options available.

What is a land trust?

A land trust is usually a private, non-profit organization that actively works to conserve land by undertaking or assisting in land or conservation easement acquisition, or by its stewardship of such land or easements. The Oblong Land Conservancy is a “land trust” whose area of focus is Southeastern Dutchess County.

The Dutchess County Context: A precedent for conservation

Through government and private conservation efforts, the eastern part of the County and its northern reaches, thus far, have escaped urban sprawl. This has been no accident of fate in Pawling and Dover, which lie within the Great Swamp Watershed, an important New York State wetland. In the first half of the 20th century precedent-setting zoning codes were established to control the “anything goes” policy of land development, open spaces were set aside for safe keeping, and heightened public awareness led to the founding of land conservation organizations.

Just as momentum was building, the Hudson and Harlem Valleys were put under severe economic stress with the closing and downsizing of some high profile businesses in the 1980's including IBM and the Harlem Valley Psychiatric Center. Conservation planning in southern Dutchess took a back seat as rebuilding the economy became the priority for local governments. Some hard-won zoning restrictions were rolled back.

At the same time, activists aware of the importance of the 70,000-acre Great Swamp Watershed to our community obtained public and political support for official recognition of this critical resource. These actions, among others, laid the groundwork for grants from Federal and State sources to purchase land, development rights and easements. In all, nearly 40,000 acres of private land have been set aside for limited or restricted use in Dutchess County. This is in addition to public lands, such as municipal parks, or those owned by public agencies, such as the Appalachian Trail.

Why put land into conservation?

Individuals who own land, whether it be a small parcel with high conservation value, or a large tract of land with an exceptional viewshed, have varying reasons for putting their land into conservation.

The Oblong Land Conservancy (OLC) has found that most of the people who have entrusted us with protecting their land are conservation-minded individuals

who love the land and want it to be a part of their legacy. One of our easement donors says: “I have always loved the outdoors and wanted to leave a legacy that respected, and hopefully, enhanced the environment. After consulting my family, I finally got around to carrying out my intention.”

Other land owners may be motivated to join their neighbors in assembling a contiguous tract that provides undisturbed habitat or a viewshed for the public and their own personal benefit.

Another of our easement donors says: “A substantial piece of land adjoining mine has also been conserved, which may encourage others in the neighborhood to consider conservation as well. Conservancy can have this kind of cumulative effect; what is needed is for somebody to start the ball rolling.”

There can be financial benefits to the individual land owner as well. When land is put into conservation or development rights are donated to a qualified conservation organization, such as OLC, Federal and State tax advantages are available. For a developer there may be a need to provide open space as a condition of gaining consent for a residential “cluster sub-division.” To protect water supplies, land may need to be set aside as an aquifer recharge area.

What are my options as a land owner?

There are two main conservation alternatives. Land can be donated or sold to a qualified conservation organization, such as a land trust, or a conservation easement can be granted to a land trust. However, there are a variety of options within these two alternatives that may be used to advantage in asset management and estate planning, where disposition of assets rather than income are involved.

Conservation Easement

A conservation easement is a legal agreement entered into between landowner and land trust that permanently restricts or directs the uses of the property in order to protect its conservation value. If a land owner wants to continue to use the land for farming, forestry or other uses, this becomes part of the agreement negotiated by the parties. This enables property owners to continue to enjoy what is special about their land while benefitting from the tax allowances that can arise as a consequence of conserving their land. (See details in the Benefits section below.)

A conservation easement may result from the land being donated by the property owner to the land trust, or the easement rights may be purchased by the land trust. An easement may apply to some or all of the property and need not require public access.

Ownership Transfer or Donation

The land owner may not wish to retain title to the land, in which case the fee interest in the property may be either donated or sold to the land trust. The sale may be at market value or what is known as a “bargain sale,” that is, at a value something less than market value. This makes the purchase by the land trust more affordable and benefits the owner by potentially mitigating capital gains tax and generating a charitable income-tax deduction.

There are additional options involving estate planning where appreciated property, and not just land, may be donated to a land trust. This may involve an outright gift for the use of charitable gift annuities, remainder trusts or life interests that allow a donor to enjoy a property during his or her lifetime yet make prudent provision to minimize taxation on his or her estate. A gift can be given anonymously, and it can be stipulated that the property will be open to the public and/or become a Preserve named for the donor. A preserve must serve a public function in order to qualify for property tax exemptions when the ownership is transferred to the land trust.

Any property may be worthy of protection. The parcels that a land trust such as OLC deems vital for protection in order to realize our mission to “protect our future” are parcels that have high conservation value. This means that the land

How do I know if my land is worthy of putting into conservation?

possesses certain characteristics, such as supporting rare or endangered species of flora or fauna; contributing to an important historic viewshed; being part of a designated “Greenway”; or comprising important agricultural soils. OLC, like other land trusts, has a series of “Acceptance Criteria,” a basic number of which must be fulfilled in order for it to accept a property.

The best way to find out if your land has the appropriate qualities for conservation is to contact someone from your local land trust. They will arrange to inspect the property with you, discuss its attributes and assess its conservation value.

Oftentimes land adjacent to open space supports higher values than land that does not, although the monetary value of such land may decline when development rights are surrendered. For these reasons, some important State incentives are in place to encourage conservation.

New York now has a Conservation Easement Tax Credit that is part of the State tax code. Where land in the State is subject to a conservation easement, a State income-tax credit of 25% of all real estate taxes paid on the land (excluding improvements) up to a maximum of \$5,000 is available. This credit is for landowners where the easement is held by a qualified land trust or other agency and is unaffected by the income level of the landowner. Further, the credit runs with the land and is transferable to new landowners when ownership changes.

Benefits to the land owner of putting land into conservation?

Additionally, qualified conservation easements, in the form of a charitable donation, may be eligible as a deduction from State and Federal taxes. Where development value has been surrendered as a term of a voluntary donation (i.e., where there is no quid pro quo) of an easement - that value, or a portion thereof, may be written off against taxes over a period of, presently, 6 years. The Federal Enhanced Easement Tax Incentive, which allowed for deductions higher than 30%, expired at the end of 2013. While efforts are underway to extend this incentive or make it permanent, the current position is that a deduction of 30% of Adjusted Gross Income over a period of six years is all that is available. The development value of the donation has to be the subject of a formal appraisal and represents the difference between the value of the land with its full development rights as opposed to its value without some or all of those rights.

To qualify for the deduction the IRS imposes certain requirements. There must be a “conservation purpose” that serves to represent a public benefit, such as an educational resource or the preservation of scenic views or important habitats. A land trust, such as OLC, with expertise in this area, will assist the property owner in making the case to the IRS.

Donations of land in fee or the subject of a “Bargain Sale” also allow for deductions following the surrender of value to the beneficiary. If donations form part of estate planning there may well be additional benefits that accrue. It is

important that appropriate professional legal and tax advice be sought before entering into any formal arrangements.

Conservation benefits not just land owners but the community at large. Viewsheds and recreational space are maintained, habitat is preserved for flora and fauna, water is filtered, aquifers are recharged and vegetation replenishes oxygen and removes carbon dioxide from the atmosphere.

Conservation also works at a more subtle level as it serves to draw community and volunteer and social interests together as well as provide educational opportunities. It can also operate to promote more sensible development by way of "smart growth."

Merely setting aside land for conservation purposes in a will does not ensure that it will remain in that state forever even if it is currently zoned for open space purposes. Zoning regulations are subject to change at a community's pleasure, and unless open space is protected and stewarded on a permanent basis there remains the risk that it will be lost to development of one kind or another. Accordingly, to ensure that land is properly protected in perpetuity some form of legal conservation instrumentality is required, usually involving a land trust.

**If I want to preserve my land,
is it enough to put a provision
in my will?**

What happens after I put my land in conservation?

A vital part of the process of placing land in conservation by way of a conservation easement is preparing a Baseline Documentation Report (BDR). The BDR, which is the responsibility of the land trust, describes the property at the time the easement is recorded. It identifies the property and its attributes and provides a benchmark "baseline" against which changes to the property or its use are established.

After the BDR is completed, the role of the land trust is to ensure proper stewardship of the property. Depending upon the terms of the easement, the land trust will arrange to inspect the property at least once a year to establish that the terms of the plan are being upheld. A written record of each inspection is maintained by the trust. If the plan calls for active management, there may be more frequent contact between the owner and the trust to discuss relevant issues. Essentially, there is a partnership between the owner and the trust with a view to protecting the land in question that honors the easement and the agreement, and provides for enforcement should that become necessary.

What happens if I wish to sell my property after it is put into Conservation?

The conservation easement is permanent in nature and is recorded in the local County Clerk's office. In legal terms it "runs with the land"- and that means that future owners of the property are bound by its terms and conditions. The placement of a conservation easement on land does not prevent its later sale but it does mean that the universe of buyers is defined by those who share an

Let the Oblong Land Conservancy help

interest in conservation values and wish to benefit from the protected open space. An individual who purchased property that was already in conservation says: *“the fact that the property was conserved by way of a conservation easement was a definite advantage as I have always considered myself a ‘Friend of Nature’ .”*

If you are a land owner thinking about the issues raised in this Guide, we urge you to contact us today. We are a non-profit 501(c) 3 organization founded upon the belief that open spaces are vital to the well-being of our communities. We work with land owners, developers and local government to preserve open spaces in Southeastern Dutchess County, New York. Let us guide you.

One of our easement donors says: *“Many environmentally oriented people who would like to put a conservation easement on their property fail to do so. I urge those considering a conservation easement to go ahead. It is easy to do, working with your local land trust. You will not regret it.”*

Oblong Land Conservancy Case Studies

I. A dedicated conservationist with a single-family residence on a six-acre parcel wanted to plan for the future. She wanted to put the property into conservation yet continue to live in the house until her death. In addition, with over-development in mind, she wanted to impose some modest limitations upon the size of the house that could be built by future owners. Following consultation with us these objectives were achieved by entering into an agreement whereby

title to the property was to be transferred to us upon her death coupled with the execution at the time of the agreement of a conservation easement protecting the undeveloped part of the property. The existing dwelling was identified as being within a building envelope that allowed the rebuilding or remodeling of the dwelling to no more than 110% of its original size. The agreement provided that at the time we took possession of the property we could occupy, rent or sell the property as we saw fit. An alternative structure for the transaction that would have been as effective would have been for the property to be conveyed to us then subject to a life interest for the benefit of the owner.

II. A property owner was bequeathed a substantial tract of land formerly used as a quarry. An attractive property with considerable conservation value it has a stream running through it and has potential for residential development that the owner wanted to realize. After consultation with us it was determined that the twin objectives of conservation and development were not inconsistent based upon a “cluster” sub-division thereby allowing the protection of the open space. In conjunction with us and the local planning board a sub-division plan was discussed and agreed upon that balanced the number of housing lots and their location on the property, recognized and supported the conservation values of the property and developed a riparian buffer along the watercourse. A homeowners association is to be formed that takes over the ownership interest in the

open space and grants us a conservation easement with responsibility for stewardship of that part of the property.

III. The owner and occupier of a single-family residence on 16 acres wanted to preserve the parcel with no further development permitted (zoning would otherwise allow two additional houses). The land surrounding the property is in long-term agricultural use. The owner came to us because they did not want to retain the responsibility for the full 16 acres yet wanted it protected. The solution involved entering into a multi-party agreement whereby a separate tax lot was created for 11 of the 16 acres, excluding the house and 5 acres surrounding the house. The lot line adjustment facilitated the sale of the 11 acres to the owners of the adjacent agricultural property. OLC was granted a conservation easement with stewardship responsibility on all 16 acres.