

Town of Dryden

Methods and Selection Criteria for Land Protection and Acquisition

(12/30/14)

Overview

The Town of Dryden recognizes the value of a variety of tools to meet its land conservation goals, including outright conservation ownership, conservation easements, regulatory techniques, public education, and collaboration with other organizations. The criteria and checklists in this document are aimed primarily at assessing land for conservation through ownership or easements.

Although the Town often may have insufficient funds available for acquiring lands or easements for conservation purposes, it can nonetheless collaborate with other public and private entities to help with acquisition efforts for lands with special environmental, historic, agricultural, recreational, or scenic importance, or lands that are threatened by inappropriate development. A decision to accept a donation of property, to purchase a property outright, or to acquire a conservation easement requires assessing the conservation values of the property in relation to the Town's conservation goals and priorities and determining the Town's long-term capacity for stewardship of the property. Financial and other forms of collaboration with other agencies, organizations, and landowners can expand the opportunities for and success of land acquisition projects.

Protection Methods Primer

Fee Simple Purchase or Donation

This is the most straightforward protection method where the property is simply bought or donated in fee simple. Fee simple means that all of the property rights are transferred. The property transaction may be at full appraised value, or at less than full value as a "bargain sale," with the seller eligible for tax deductions.

Conservation Easement – Direct Purchase or Donation of Development Rights

Conservation Easements involve the transfer of some or all development rights of a property, tailored to the particular property. Among the "bundle of rights" of property are rights to develop it for commercial, industrial, residential, etc. uses. The property owner and future owners retain all rights not specifically transferred, with the conservation entity agreeing to not exercise those rights and to monitor the land ensuring future compliance. Conservation Easements are usually permanent, running with the land, and are real estate transactions legally recorded in a document similar to a Fee Simple deed. Conservation Easements are governed by New York State in Environmental Conservation Law, Article 24. This law sets out in detail the rules for Conservation Easements, including which governmental and private entities may hold a Conservation Easement. In the Town of Dryden, the town and land trusts are the most common holders of Conservation Easements.

A type of Conservation Easement is an Agricultural Conservation Easement. This type of easement is specific to farms and farmland and does not include all development rights of a property, but allows those businesses and activities that support a farm operation such as welding, mechanical repair, feed sales, retail sales of farm produce, farm buildings and farm worker housing, etc.

Covenants - Deed Restrictions

Covenants are similar to Easements, but are written into and recorded in the property deed rather than in a separate Conservation Easement document. Restrictive Covenants are normally shorter than an easement, and usually written in a plainer language, but not always. They can be held by anyone and are not regulated by a specific state law like Conservation Easements. They can be placed on the deed by the owner, and generally run with the land. Importantly however, unlike a Conservation Easement, a Covenant does not involve a transfer of rights to another entity and therefore may not be monitored and enforced like an Easement, and an owner may remove a Covenant from a deed at property transfer. Covenants are somewhat controversial historically because they often excluded people from owning property by race, religion, or class, etc.

There are many examples of restrictive covenants in the Town of Dryden. The Finger Lakes Land Trust holds a simple covenant on land that was donated to the town at Campbell Meadows, and at the Parke-Dabes Natural Area:

Grantee shall maintain the property substantially as an undeveloped natural forest open to the public for passive, non-motorized recreational, and educational uses such as hiking, cross country skiing, biking, horseback riding, nature study, and bird watching. Any tree cutting shall be done in accordance with best forestry management practices. Construction of facilities shall be limited to the establishment of a small parking area consistent with the property's use as a natural area, development of foot trails, and the installation of interpretive signs and kiosks.

Permit Conditions

Permit Conditions are those conditions that a board (Town, Planning, ZBA) attaches to a discretionary decision. These decisions include Special Use Permits, Subdivision Approval, Variances, Site Plan Review. Conditions are in some ways the most difficult to enforce when they seek to protect land, especially if they are not clearly defined on a plat or other drawing. On the other hand, boards can require an Easement as a condition of approval.

Administrative – SEQRA, Standards, Transfer of Development Rights

There is some ability to protect open space through administrative procedures. These vary from open-ended mitigation for identified impacts of a project, to administrative requirements such as lot coverage limits, or Transfer of Development Rights.

Local Laws and Ordinances – Standards, Overlays, Administrative Requirements, Use Restrictions and Prohibitions

Local Laws and Ordinances can have a large role to play in the protection of Open Space. These can be development set asides, where the developer either voluntarily or as part of a required conservation subdivision sets aside open space resources. Also lot coverage limits can protect greenspace or open space on a development parcel.

In extensive development, incentive zoning may be used following state or town law requirements. This is where the town has in place a systematic means for allowing certain types or scales of development to occur if the town's community goals are met. For example, if a development proposal is going to consume prime farmland, the town may require mitigation in the form of providing funding for purchase of development rights on a farm included in the town's open space plans.

Specific Open Space Resources of Interest to the Town

Several open space resources within the service area are especially important to the people of the region, and are therefore of particular interest to the Town. These include Dryden lake, streams, wetlands, older growth and maturing forests, scenic views, and large contiguous areas of relatively undisturbed land and animal movement corridors. These open space resources are prime examples of at least one of the following land categories, and generally meet the definitions of multiple categories.

The Town's lands play a significant role in The Emerald Necklace Greenbelt, which extends through much of its southern section. The Greenbelt is an effort to link more than 50,000 acres of protected open space among the hills and valleys surrounding Ithaca, while at the same time securing lands along 78 miles of the Finger Lakes Trail. The Finger Lakes Land Trust has been formed to promote and protect the forest and agricultural land, waters, and stream corridors, and has identified this greenbelt as an area of highest priority for preservation and protection. The Town will cooperate with such organizations in their preservation goals.

In addition, the Finger Lakes Land Trust has identified the preservation of large contiguous high quality farmland as critical for maintaining the soil resource essential for future food production, the historical character of the area, and its associated unique habitats for birds and other animals. Open meadows are in particular a shrinking resource in the upstate New York area.

The Town contains a large number of sites identified in the Tompkins County Inventory of Unique Natural Areas, an official Tompkins County compendium of designated locations that have environmental habitats, plants, animals, and natural resource properties that are critical to be preserved for future generations. While many of these sites are currently being protected by knowledgeable and concerned landowners, it is important for the town to play an active role in securing this preservation into the future.

Preliminary Considerations in Evaluating Candidate Lands

Alternative ownership

- Is the Town the best organization to protect the values of the property?
- Has the land been considered by another conservation entity like the Finger Lakes Land Trust or Cornell Plantations?
- Why are other entities not interested in the property?
- Did other entities investigate the property? Is this information available?

Considerations for easements

- If the easement is for a limited duration, can permanent protection be acquired within a reasonable time?
- If the easement involves a working landscape, do economic conditions favor continued operation?

Acquisition and fiscal considerations

- Does the Town have the resources, or access to resources, for acquisition and long term stewardship of the property?
- Does a need for public access require outright purchase of the land?
- How much will improvements for public use cost?
- What is the immediate need for improvement? What is the long term need?
- How will maintenance of the facility affect town expenses? Staff levels? Is there special equipment necessary?
- Has the owner of the property agreed to contribute to a stewardship endowment?
- Is there an existing mortgage or other encumbrance on the property, and if so, will the mortgage holder agree to the terms of the easement?
- Are there transaction costs involved in the land transfer that could be prohibitive?
- Can the land be acquired with reasonable effort in relation to its value or purpose?

Donor considerations

- Why is the donor gifting the land?
- Will the donor likely profit from the donation?
- Is the donation a result of a subsequent town approved project or permit process?

Restrictions

- Will the donor place a covenant on the property? If so, who will monitor the covenant?
- Can the Town transfer the property in the future?
- What uses are legally restricted on the property? Does this overly restrict town use of the property?

Feasibility / Factors That May Preclude Dryden Town Involvement

A property may meet the selection criteria favoring a land protection proposal and still may not be accepted if one or more of the following considerations apply:

The property's values are primarily scenic, but are not readily visible or accessible to the general public.

The proposed open space is part of a development proposal that, overall, is likely to have significant adverse impacts on conservation resources.

Adjacent properties are being, or are likely to be, developed in a manner that would significantly diminish the conservation values of the property in question.

The landowner insists on provisions in a conservation easement that the Dryden town believes would seriously diminish the property's primary conservation values or the Dryden town's ability to enforce the easement.

There is reason to believe that the land/easement would prove unusually difficult in fulfilling stewardship responsibilities, i.e., monitoring, management, and enforcement, for example because of multiple or fractured ownership, frequent incidence of destructive trespassing, fencing restrictions, irregular configuration, or other reasons.

The property may have been used for the storage or landfilling of hazardous or other waste materials.

The property is irreparably contaminated.

Invasive Exotics - Are there invasive exotic species on the property that threaten the usefulness or ecological soundness of the property? Can they be eradicated or managed? Are they noxious, poisonous or do they otherwise inhibit public use and enjoyment?

The property cannot be acquired by the Dryden town with reasonable effort in relation to the property's conservation value.

The property is not large enough to be significant for its conservation value within its regional context.

Ethical or public image problems exist in association with the acceptance of this project.

Selection Criteria Checklist for Land Protection and Acquisition

1. Goals and Purposes

*To qualify for selection, a property must meet **ALL** of these criteria:*

- The protection of this property is consistent with the stated goals of the Dryden Town's Comprehensive Plan.
- The property has valuable natural, scenic, recreational, or agricultural resources.
- The property is of sufficient size, given the context of the surrounding area, that its conservation resources are likely to remain intact, or there is potential for protecting additional adjacent acreage in the future.
- Protection of this property aids sound land use planning, promotes land conservation, and encourages careful stewardship of land and water resources.
- The site has the potential for having a sound and cost effective management plan.

2. Public Benefit & Natural Resource Values

*To qualify for selection, a property must meet **ONE OR MORE** of these criteria:*

- Consistency:** The protection of the property is consistent with the Town's Open Space Inventory, with Tompkins County Plans, and/or with the NY State Open Space Conservation Plan?

- Identified in a Plan or Study:** The area has been identified in a State, regional, or local master plan, guide, study, or inventory as being of special environmental, aesthetic, recreational, educational, or historic significance?
- Unique Natural Areas Inventory:** Contains or includes property within a Tompkins County-designated Unique Natural Area.
- Ecosystems/Habitat:** Contains significant natural ecosystems, natural features, or habitat for wildlife, fish, or plants (wetland, forest, scrub, field, meadow, nesting, feeding, mating, ...), areas used by migrating wildlife, lands containing exemplary ecosystems, or habitats which offer important educational or recreational opportunities.
- Wildlife Corridor:** Provides a habitat connection—a corridor linking larger areas of significant habitat that is important for the movement or long-term health of wildlife.
- Rare Species/Communities:** Contains endangered, threatened, or rare species or natural communities. Should any plant communities be protected from public use? How much of the area should be protected from public use? Are they susceptible to theft? Are they susceptible to wildlife browsing?
- Water Features:** Contains wetlands, floodplains, waterways, riparian corridors, aquifer recharge areas, particularly sensitive watershed areas, or other lands necessary for flood protection, the protection of surface or underground water resources and plant, fish or wildlife habitat, or provide important educational or recreational opportunities. Despite wetland laws at both the State and Federal levels, conservation easements or ownership of wetlands are the most effective protection.
- Stream Corridors:** Includes land which would provide public access to streams, allow for the creation of stream-side trails, contribute to the protection of water resources, or protect important aquatic or terrestrial habitat.
- Ecosystem Restoration Potential:** Includes ecosystems on site with potential for habitat restoration. For what target species (birds, fish, etc)? Is there potential for creation of ecosystems rare in the area (i.e. convert forest to meadow, etc.). Can a wetland be expanded, restored or enhanced?
- Ecosystem Services Protection:** Provides ecosystem services to the town. How are these services best protected?
- Soils:** Contains prime, statewide important, unique, or other productive soil for the purpose of agricultural production.
- Working Landscapes:** Contains lands being utilized for their natural resources, particularly farming and forestry (Are there timber resources on the property? What is the potential for future harvesting?). Working landscapes provide wildlife habitat and scenic value, and can also be a source of recreational and educational opportunities.
- Buffer for Resources:** Serves as a significant buffer for prime agricultural land, wetlands, wildlife habitats, or other sensitive areas.
- Contiguous With or Buffer for Protected Land:** Is close to or contiguous to, or provides a buffer to an existing conservation easement, park, preserve, or other protected land, or a resource likely to be so protected in the near future.
- Community Character:** The property is important to a community as open space because of its significance in defining the character of the community.
- Scenic Views:** Protects a scenic view from public roadway, waterway, or recreation area. Locations exist throughout the Town that provide views of hills, forests, rolling

farmland, wetlands and waterways. Town residents and visitors value scenic vistas, yet lands which command these views are in demand as building sites. Development of the property could obstruct or diminish scenic views or interfere with views across already protected open space.

- Recreation:** Provides significant active or passive public recreational opportunities consistent with the protection of natural resources. If the purpose of the property is primarily a recreational or educational resource, or a scenic view point, the public will have adequate access. Do the recreation opportunities complement other recreation opportunities in the area of the town, or add to existing opportunities, or create new opportunities? How will people get to the property? What parking or bicycle facility needs will there be on the property? Is development of a town facility for recreation or otherwise feasible. Will the property draw people from outside of town?
- Trail corridors:** Includes land which would guarantee long term access to trails, extend or link existing trails, provide for new trail networks, or buffer trails from conflicting land use. Is there opportunity for people to use trails as a means for getting to work, or shopping?
- Geologic and Other Scientific Resources:** Contains unique or outstanding examples of geological features or processes, or contains significant paleontological sites, or lands which offer educational or research opportunities of particular value to the scientific community.
- Gateway:** Is located in an important transition area between rural and developed areas or along a significant transportation corridor entrance to a town, village or city.
- Historic or Archaeological Areas:** The Finger Lakes region has a rich history, being a focal point of Native American activities prior to the arrival of Europeans. Areas of interest include those which would contribute to the preservation of important cultural resources.
- Precedent:** Sets an important precedent for resource or open space protection in a targeted area.

The Board's Discretionary Role

All the preceding notwithstanding, the Town Board retains discretion over acquisition or disposition and will evaluate each project and proposal on its own merits after careful investigation of the property, its resources, and its public benefits.