

Preserving OC through Conservation Easements

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Orange County has seen its fair share of land development of many sizes and types in recent decades, changing the landscape and the overall quality of the experiences had in the County by residents and visitors. Many people and businesses move to Orange County because of its historically rural landscape, which could have already been erased had it not been for land conservation initiatives. While land acquisition can preserve land in the form of a park or nature preserve, conservation easements have effectively conserved thousands of acres in Orange County over the past few decades.

What is a Conservation Easement?

A conservation easement is a legally-binding document that is agreed upon by a landowner and either a municipality or a land trust. The easement document states the conservation values of the subject parcel, outlines the allowed and prohibited uses in order to protect the outlined conservation values, and defines an easement monitoring plan. A survey is required to place an easement on the land and therefore the easement will often include a map, which may outline specific areas that are exempt from the easement entirely or have different allowed and prohibited uses. The easement runs with the deed of the land in perpetuity. An easement can either be purchased by or donated to the grantor, which is the municipality or land trust that is charged with enforcing the easement's terms. The value of the easement is estimated by an appraiser as the difference between the land's value without restriction and its value with the restrictions set forth in the easement. The land should be developable (e.g. not 100% wetlands or steep slopes) in order to have an easement placed on it; undevelopable land could still have an easement, but the easement would have low or no monetary value.

A baseline assessment is done for the subject

property when the easement document is signed by all involved parties so that future monitors of the easement will be able to identify if any significant changes have been made to the property and are altering the conservation values. The grantor of the easement is responsible for regular, usually annual, monitoring of the property and may even go to court to challenge the grantee (landowner) when an easement appears to have been violated. If a grantor does not properly monitor and defend the easement's conservation values, the involved land trust could lose its accreditation with the Land Trust Accreditation Commission, which is a national organization. A conservation easement is not to be taken lightly, especially by the grantees of the easement. This is important to note because many municipalities are holders of conservation easements either through a conservation subdivision process or involvement in a purchase of development rights (PDR).

Enforcement of Conservation Easements

While the Planning Department regularly encourages conservation subdivisions as a way to conserve land during the land development process and is almost always supportive of PDR projects, it also strongly advises that municipalities be sure that they have the long-term capacity to monitor and enforce the terms of the easement. Often a municipality will assign a staff person, such as the code enforcement officer or assessor, to perform annual monitoring visits. Other times there may be a dedicated volunteer who has the time and skill set to do the monitoring. A third, and possibly the most reliable option that some municipalities have chosen, is to pay a land trust to oversee the monitoring work on their behalf. Regardless of who performs the monitoring, the annual documentation, including a written report and often pictures from the field visit, needs to be filed in the municipal hall to ensure access and safety.



Despite the best intentions of landowners, it is common for easements to be violated if they haven't read the easement language. This is especially common when the land is sold by the original grantee to an unsuspecting buyer. Examples of common violations include placement of a new building that is too large or is in an area of the property where such a building is prohibited, building a paved road from a house to a barn or outbuilding, or disturbing vegetation that is listed in the easement as a conservation value.

Entities holding conservation easements in OC include:

- Municipalities, led widely by the Town of Warwick but also including the Towns of Montgomery and Goshen
- Land Trusts, including the Orange County Land Trust, Open Space Institute, Hudson Highlands Land Trust, and Scenic Hudson
- Orange County, which co-holds easements with a municipality or land trust on 20 properties, the majority of which are farms

If a town planning board is reviewing a proposal for a conservation subdivision, the following should be considered:

- Who will hold the easement – If the municipality does not have the capacity to annually monitor the easement, the applicant should reach out to a land trust. If a land trust will be involved, they need to be heavily involved in the subdivision process because they have conservation goals of their own and will need to help design the subdivision so that it best conserves the resources on site.
- What the conservation values are – Examples of valuable areas to protect include, but are not limited to: important habitat, prime agricultural soils that are actively farmed, scenic views, waterbodies and wetlands, riparian buffers.

- If there are adjacent protected areas nearby – Capitalize on nearby protected open space by choosing to preserve a section of the parcel that abuts already-conserved property to get even more value.
- Shape of easement – Long skinny easements are not only difficult to monitor, but will likely have a lower conservation value. Try to maximize the area to perimeter ratio.

One of the go-to resources for planning board members who want to learn more is the (now legendary) book *Conservation Design for Subdivisions: A Practical Guide to Create Open Space Networks*, published in 1996 by Randall Arendt.

Preserving Orange County

Finally, it is important to understand how conservation easements help to preserve quality of life in Orange County. Examples include:

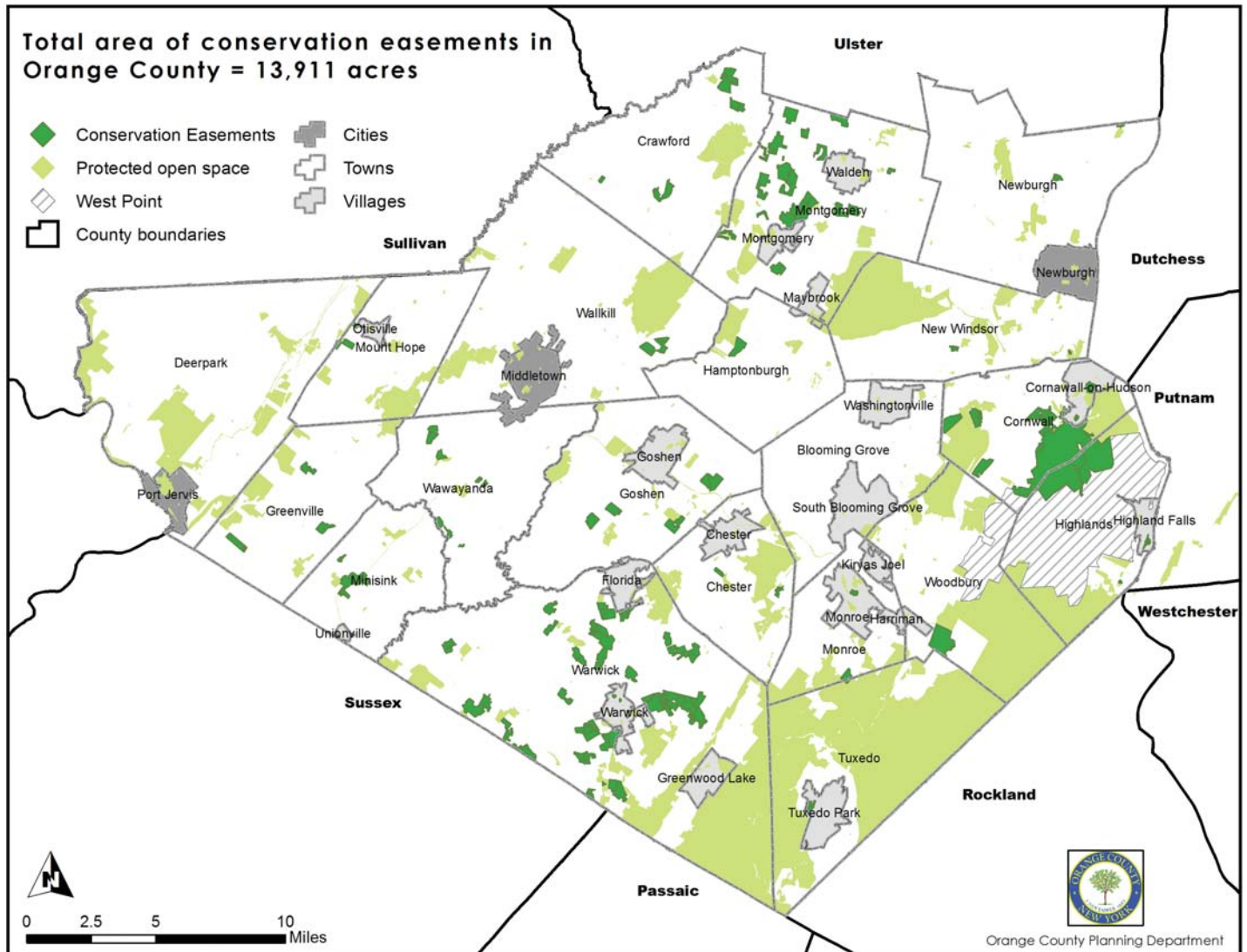
- Support of local economy. Many farms may not be in business today if they had not benefitted from PDR funding from NYS Department of Agriculture and Markets, Orange County, the USDA, their municipality, or a land trust. Fewer farms would mean fewer vendors at the farmers markets, less open space, more traffic and more children in schools (i.e. school tax increase) if the farmer stopped farming and subdivided land into housing, which is an all-too-common occurrence.
- Wildlife. Both rare and common species benefit when their natural habitats are conserved and their migration routes kept intact.
- Mitigation of climate change. Forests and soils sequester carbon and natural areas make our County more resilient to future severe weather events.
- Scenic views. Many of the beloved views of natural or farm lands are still intact today thanks to land conservation.



Finally, it should be noted that conservation easements often do not include requirements for public access, so if your municipality is interested in developing a park, an easement may not be the right tool for a non-municipally-owned property. Your community would need to acquire the land directly through a purchase or a donation from the landowner,

if its goal is to provide public recreation, be it active or passive. There are many ways to finance acquisition of parkland, ranging from municipal bonding, to grants from the State’s Office of Parks, Recreation and Historic Preservation, to the imposition of a real estate transfer tax.

Map of Conservation Easements in Orange County



There are dozens of conservation easements within Orange County. Each easement is unique in its prohibited and allowed uses. Many easements are on farms and those farms are often referred to as PDR farms (PDR meaning “purchase of development rights”).

