



## **What Is a Conservation Easement? Facts for Farmland Owners**

### **Introduction**

Conservation easements offer a private-sector solution to the problems of vanishing farms and natural habitats. A conservation easement is contained in a voluntary agreement between a landowner and a qualified easement holder (such as the Ontario Farmland Trust) which limits the amount and type of development that can occur on a property to preserve its agricultural potential and natural character.

This tool is relatively new in Ontario and can be quite complex. Talk to your lawyer, your tax advisor, and your estate planner about what an agricultural conservation easement can mean for you and for future generations.

### **What is a Conservation Easement?**

When you think of owning a piece of land, you can think of it as a “bundle of rights.” A conservation easement (also known as a “covenant”) is a legal agreement between you and the easement holder by which you place specific limitations on the future uses of the land – while you still retain ownership of the land.

The terms of conservation easements vary, as each is tailored to the specific landowner. However, all limit subdivision and environmentally damaging forms of development. Easements in conservation agreements are typically granted in perpetuity and remain with the land regardless of who owns the land.

Currently, conservation agreements in Ontario are made pursuant to the Conservation Land Act. Easements can also be made under the Ontario Heritage Land Act. In general, a conservation agreement under the Conservation Land Act requires that the goals include preservation of the land’s natural features, scenic values, and/or scientific and educational potential.

The legislation lays out who is eligible to hold the conservation easement you grant. In general, you have the choice of granting a conservation easement to the crown, a municipality, to a conservation authority or certain registered charities, such as the Ontario Farmland Trust. You can also choose between granting an easement on all or a portion of your land.

### **What are the first steps?**

1. Choose an organization to work with. Conservation easements are granted – and held – for a variety of different reasons. Your peace of mind will depend on finding an organization that you trust and can work cooperatively with for the years to come.
2. Get expert advice.
3. Determine your needs and desires:
  - Do you want to grant an easement on part or all of your land?
  - Would you prefer to grant an easement now or when you retire?
  - Do you want to include the grant of a conservation easement in your will?
  - Do you want to sell or donate a conservation easement?

### **What is the procedure for granting a conservation easement?**

- Establish title to the property
- Create a baseline report
- Draft the conservation agreement document to contain the following features:
  - Guiding principles
  - Rights and responsibilities
  - Remedies
  - Property description
  - Baseline report
  - Restrictions
- **Have the easement property appraised**

Conservation agreements often have a monetary value because the appraised value of the land may decrease once there is an easement on title. In effect, the difference in value is treated like a charitable donation. The Ontario Farmland Trust is recognized as a charitable organization by the Canada Revenue Agency and may issue you a receipt for the difference in the land value before and after the easement is in place, which can be used for income tax purposes. If your donation qualifies under Environment

Canada's Ecological Gifts Program, the donation may grant you breaks on capital gain on the donation and give you the right to use your donation to reduce your income tax burden for the year of the donation and up to five years thereafter.

- **Register the Agreement in the Land Registry**

What happens after the Conservation Easement is granted?

The conservation easement document will specify the terms for monitoring activities, enforcement options, access, proposed changes in land use, alteration of the agreement, and what will happen if the grantee is no longer able to hold the conservation easement.

- **A Note about Access**

A Conservation Agreement does not diminish an owner's peaceful possession of the land. There is no requirement under conservation easement legislation allowing public access beyond what you desire.

### **What are the tax implications of granting an agricultural conservation easement?**

Landowners can obtain significant tax benefits through granting conservation easements. The Ontario Farmland Trust is lobbying governments for greater recognition of the values to society that conservation agreements provide through enhanced tax relief and other measures.

#### **Income tax benefits**

If you donate a conservation easement, there are four basic steps for determining the effect on your income taxes:

1. determine the value of the easement
  2. calculate your resulting capital gains
  3. calculate the income you report
  4. calculate the allowable tax deduction of non-refundable tax credit
- (The process is the same if you sell an easement, except that you omit the fourth step.)

For further information and a no-obligation visit from a representative of the Ontario Farmland Trust, please contact the Ontario Farmland Trust at (519) 824-4120 ext. 52686 / (519) 824-5730 (fax) / [farmland@uoguelph.ca](mailto:farmland@uoguelph.ca).