



Is a conservation easement the right tool for my farm business?

A guide for farm business owners



April 3, 2003

Ora Rothfuss III, Agricultural Development Specialist
Wayne County, New York



Introduction

This course grew out of my work with farmers in the Town of Macedon who were considering the sale of an agricultural conservation easement. Many questions have come up and while there are many resources on the web for municipalities and land trusts, few focus on farm owners. I hope this can help you through the decision making process. Easements are one management tool and are not for everybody or every farm business.

This course is **not** designed to provide all of the questions or the definitive answers to the basic question “Should I place an agricultural conservation easement on my farm?” Instead it should be a guide to organizing your information so that you can make an informed decision. By bringing all the pertinent information together in one spot, your advisors– family, legal, financial and business- can easily come up to speed on what you are trying to accomplish. There is no one correct answer that will fit all families or farms. The best that we can all do is to find out as much as we can, then utilize the tools that are available to accomplish our goals.

How to use this book

This workbook is designed as a supplement to an on-line course. The information on each page is brief and should only serve as a prompt for further discussion or research.

The workbook can also be used in a three-ring binder as dividers to organize your thoughts and questions. As you find information that is relevant to your farm, you can download and print it, then add it to your Farm Workbook.

Disclaimer

We cannot vouch for the accuracy or correctness of the workbook or any of the included websites. The links were chosen because they appear to cover relevant topics. Any information should be discussed with the appropriate advisor before making a decision. Some other web sites may have been overlooked because they did not appear in the search results.

Acknowledgements

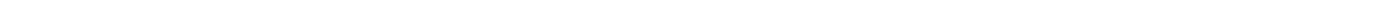
This book was made possible through the support of Wayne County, NY; Growing New Farmers Consortium and USDA Sustainable Research and Education (SARE).

Ora Rothfuss III, Agriculture Development Specialist
Wayne County Planning
9 Pearl Street
Lyons, NY 14489
(315) 946-5919
orothfuss@co.wayne.ny.us



Table of Contents

<u>How to use this book</u>	2
<u>Chapter 1 Development rights– what they are and how they work</u>	4
<u>What is a conservation easement?</u>	4
<u>Who holds the easement?</u>	5
<u>What is monitoring?</u>	5
<u>Why sell an easement?</u>	6
<u>Landowner satisfaction?</u>	6
<u>Chapter 2 Long-term vision</u>	8
<u>What are my long-term farm-business goals ?</u>	8
<u>What are my long-term non-farm goals ?</u>	9
<u>Other goals</u>	10
<u>Core Business Beliefs</u>	10
<u>Chapter 3 Financial Implications-</u>	11
<u>Chapter 4 Legal Considerations-</u>	12
<u>Chapter 5 New farmer perspective</u>	13
<u>Other Concerns</u>	14
<u>Useful Websites</u>	15





Chapter 1 Development rights– what they are and how they work

When a person buys a piece of property, he or she acquires numerous rights of ownership. Often the rights are referred to as being like a bundle of sticks. For example the landowner has the right to have a waterline or utility line cross his property, the right to drive across the property, the right to build a house. The owner can restrict, sell, lease or give away any of these rights without necessarily impacting the others. For example the owner can sell the right to run a power line across the property to the power company and still retain all of the other rights to the property. They are each separate and can be owned or held by separate parties. A development right is the right to develop and/or subdivide the property. In areas of high development pressure it is often considered to be the right to build houses. For the purposes of this workbook, we will consider the terms development rights and conservation easements to be interchangeable.



What is a conservation easement?

In order to define and control specific rights, the landowner develops an easement. A conservation easement is a legal document filed in the County Clerk's office and is public record. Anyone interested in buying a piece of property with an easement attached can then see what the property restrictions are. There are many forms of conservation easements with a wide range of intended outcomes. Some easements are developed to retain wildlife habitat, some historic preservation, etc. This project will focus on agricultural conservation easements that intend to protect the agricultural viability and productivity of a farm property. The information provided here is general in nature and it is imperative that anyone considering the use of a conservation easement work with an attorney. Any given easement can differ significantly from another based on the desires and needs of the landowners.

Agricultural Conservation easements

One of the peculiarities of agricultural conservation easements is that the document tries to define the acceptable uses of a property. The property can't be developed but can be used for an agricultural business. Barns, farm-worker housing, silos and farm stands are examples of normal agricultural uses of property which may or may not be restricted by an easement. Normal farming practices of today may be out-dated in 50 years. If the goal is to preserve the land as part of a farming business, the business needs to be able to remain viable in the marketplace with the restrictions imposed by the easement. Therefore language which allow flexibility for changing management practices is critical.



Who holds the easement?

Generally a municipality or a land trust (an entity created to hold, steward and monitor easements and/or land). Placing an easement on your property is in effect creating a partnership between the landowner and the entity which holds the easement. Serious consideration needs to be given to the long-term implications of this partnership.

What are monitoring and enforcement?

Monitoring is usually an annual visit to ensure the terms of the easement are being met. Often there is a monitoring plan defined at the creation of the easement, which establishes the process for monitoring. If monitoring identifies a violation, the easement may spell out the steps for enforcement. The holding entity has enforcement responsibilities to ensure the terms of the easement are being met.



What is a farmstead?

Often on farms, infrastructure like barns, houses, silos, etc. are concentrated in one area. Many times in an agricultural conservation easement, there is an area which is designated for future farm-related development where building improvements can occur without modifications to the easement. This could be considered barns, silos, storage barns, farm worker housing, etc. If you have specific concerns regarding potential future buildings and-or enterprises, address them with your attorney prior to placing an easement on the property.

How is an easement valued?

The short answer is “With an appraisal.” The complete process is more complicated. The property is valued at its current (high value) market value, or what the owner could reasonably expect to receive for the property in an arm’s-length sale (a sale with no special circumstances). A second appraisal is then performed to determine the market value of the restricted property (low value), or with the easement in place. The appraiser can use comparable sales of similar farmland in areas away from development pressure. An income-based appraisal, what the property would be worth based on potential profit as farmland, might be performed. A third way to determine the “restricted value” of the farmland would be to compare sales of land with easements in place. The value of the development rights (conservation easement) is the difference between the high and low values of the land.



Why sell an easement?

A conservation easement is one management tool. The decision to do so should be the result of careful consideration. Some people choose to donate an easement for their property. Others decide they will sell an easement. There are as many different reasons for using conservation easements as there are people who use them. There are a few web sites which have some basic information. Some have recommendations based on the perspective of the organization. Some of the sites have opposing viewpoints.

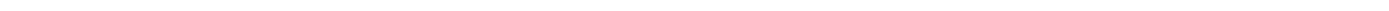
Landowner Satisfaction

I have been able to find three studies, two in the northeast and one in California, which have surveyed farmers who are farming with ag conservation easements. The California study is quite in depth, is broken into four parts and is available on the web. The Vermont study is fairly short and also available on the web. The Massachusetts study is available through American Farmland Trust.

Massachusetts- “Investing in the Future of Agriculture: The Massachusetts Farmland Protection Program and the Permanence Syndrome” by Sherman, Milshaw, Wagner and Freedgood, 1998 American Farmland Trust

Vermont- “From the Field: What Farmers Have to Say About Vermont’s Farmland Conservation Program” by Kirsten Ferguson and Jeremiah Cosgrove, 2000 American Farmland Trust

California- “California Farmers and Conservation Easements: Motivations, Experiences, and Perceptions in Three Counties” By Ellen Rilla and Alvin D. Sokolow with the assistance of Robin Kozloff and Cathy Lemp University of California Agricultural Issues Center
California Farmland & Open Space Policy Series Research Paper #4 December 2000





Chapter 2 Long-term vision

What are my long-term farm-business goals ?

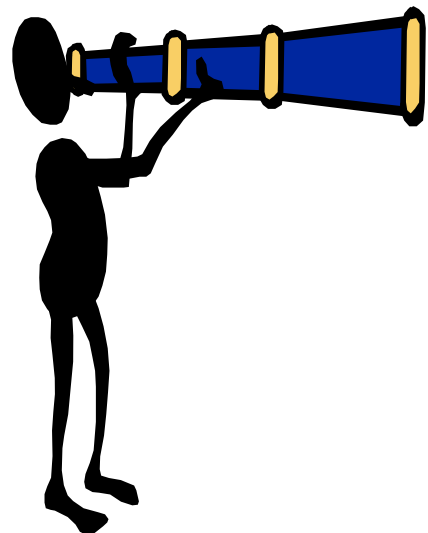
An easement is a permanent restriction for the property. The decision to undertake a long-term commitment should not be done in a vacuum. One of the best ways to address a business' future is with a business plan.

A good business plan will take some time to address properly. There are many resources on the web, in the local library and from Co-operative Extension, industrial development agencies, community colleges, etc. A business plan helps tell your vision for your business to partners, advisors or lenders. This allows you to then analyze whether or not a conservation easement is a management tool that will help you attain your vision.

Long Term Business Goals– a quick outline

In 10 years my business will:

- Be known as _____. (Ex. "a good dairy farm, with high quality feed, good animal care, good employer")
- Work ___ acres of land and I will own ___ acres
- Employ ___ people including myself.
- Be growing ___ acres of these crops _____; _____.
- Be raising of ___ of these livestock _____;
- Be producing ___ pounds of this livestock product _____;
- Generate ___% of my net income from my core business
- Have other related enterprises which include ___ and will produce _____% of my net income.
- In the future this farm business will look like this _____.





What are my long-term non-farm goals ?

So often it is easy to concentrate on the farm business and forget, or ignore the personal long-term goals for the farm owner. Farm owners live their business. Separating business and personal goals is often difficult, but most people believe that businesses are secondary to personal lives.

Taking the time to establish some goals for retirement should be part of this process. Land under a conservation easement is probably not worth as much money in the future and there are fewer people willing to purchase restricted land. Anyone considering the sale of an easement should have a plan for funding their retirement.

Likewise, any younger person buying a restricted farm will need to remain aware that the land values of the farm may not escalate enough to fund their retirement and therefore should establish an off-farm retirement fund.

Long-term personal goals starter list-

___% Return on investment

___ Retirement age

Retirement income

\$___/year from investments-

\$___ from the farm sale

\$___ from Social Security

Estate planning

I estimate the value of my estate to be \$___.

I have a will, the assets are divided like this ___.

Estate Planning resource-

“Your Land is your Legacy”, Cosgrove, Freedgood (American Farmland Trust 800-370-4879)



Other goals

Not all decisions are based on money.

Many people donate easements because a conservation easement helps them to achieve some of their personal goals. Everyone has different goals and desires. Being able to express these desires will help your legal and financial advisors to understand what you are trying to accomplish. They can then offer advice and help design a program to help you to accomplish your goals.

Other goals might include-

Seeing my farm stay farmland forever.

Keeping my land affordable for the next generation of farmers.

Getting as much money as possible for my retirement.

Receiving money from the sale of the farm over this period of time ____.

Core Business Beliefs

Personal goals aside, one should consider his or her core beliefs about the business of farming. Unless the goals for preserving the landscape greatly outweigh financial needs, anyone involved with agricultural conservation easements should have strong beliefs that farming can and will continue to be a profitable business.

Core beliefs– agree or disagree?

Farming can be a profitable business.

Farming practices change over time.

This farm can be profitable in the long term.



Chapter 3 Financial Implications-

Many farmers who sell a conservation easement use the proceeds to diversify or expand their business. Estimating the potential returns from such an investment will be one factor in the decision making process. Taxes can take a bite out of any sale of capital investment. Determining the tax implications for any sale is important. Landowners should do a comparison of the net income of a land sale with a conservation easement versus a land sale without an easement. Working with a good financial advisor is highly recommended.

- What is the expected net income (after closing costs and taxes) return on the sale of the farmland **without** a conservation easement?
- What is the expected net income (after closing costs and taxes) return on the **sale of a conservation easement**?
- What is the expected net income (after closing costs and taxes) return on the sale of the farmland **with** a conservation easement?
- What are the Estate tax implications of a conservation easement on my estate?
- Are there ways to lower the tax impacts?
- What are some options for utilizing the funds from the sale of an easement?
- What are the projected returns from these investments?

Financial concerns– a thumbnail sketch

If I sell a conservation easement, I will-

Pay down debt,

Set aside money for retirement

Buy more land

Pay \$_____ in capital gains or income taxes

Expand my core business by _____.

Diversify my business by starting a new enterprise such as _____.

Use the money to provide fair distribution of my assets in my estate with my heirs.

Other _____.





Chapter 4 Legal Considerations-

Any transaction involving real estate should involve an attorney. This is especially true for the development of an agricultural conservation easement. The easement could impact management decisions and techniques in the future. When establishing a legal document which you will be living with for years to come, it is critical to include an attorney as an advisor.



- o What rights are actually restricted?
 - o Development rights
 - o Access rights?
 - o Other?
- o Are there any reserved housing lots?
- o Farmstead-
 - o How large of an area will be needed in 10 years?
 - o What enterprises can occur within the farmstead?
 - o What permissions are needed to build within a farmstead area?
 - o Future enterprises that might be running
- o Process for easement modifications if necessary.
- o What happens if I violate the easement?
- o What is the monitoring and enforcement process?
- o What are the potential costs?
- o Can I appeal to someone?
- o Are farm-worker houses allowed?
- Are farm stands allowed?

Hardcopy Resource-

“The Landowners Guide to Conservation Easements” Bick, Haney
Available from American Farm Bureau (847) 685-8742

<http://www.fb.com/news/nr/nr2000/nr1208.html>



Chapter 5 New farmer perspective-

One of the main objectives of ag conservation easement programs is to lower the land acquisition costs for the next generation of farmers. However, just because you can buy land for a lower price does not guarantee that your business will be profitable. Anyone who starts a business, farm or otherwise, needs to know where the profits will be found in the future. Some of the questions below will have been addressed in the business plan in Chapter 4, but if not, they will probably come up in any loan application.

- o What is the fair market value for the farm today?
 - o How can I figure that out?
- o Does my lender understand the impact of conservation easements?
- o With whom can I speak about interpreting the easement?
- o This is what I want to do- is it allowed under the easement?
- o What kind of commitment is there locally to agriculture?
- o Will there be other farms around or will I potentially be the last one in Town?
- o How far do I have to go for services?
- o What are the potential markets for this farm.
- o What profit do I need to be able to buy this farm?
- o What profit do I need in order to live comfortably?
- o What profit do I need to invest in order to retire comfortably?



Useful Websites

Conservation Easement– What is it?

<http://www.farmlandinfo.org/fic/tas/tafs-ace.html>

<http://ohioline.osu.edu/cd-fact/1261.html>

http://outreach.ecology.uga.edu/tools/fact_sheets/conservation%20easements.pdf

Conservation Easement What does it mean?

<http://www.vlt.org/farmease.html> (guide to easements)

<http://www.fb.com/news/nr/nr2002/nr0106g.html> (Landowners cautioned)

<http://www.mtlandreliance.org/faq.htm> (frequently asked questions)

<http://www.farmlandinfo.org/fic/tas/tafs-pace.html>

<http://www.farmland.org/farmlegacy/easements.htm>

Conservation Easement– Pro’s and Con’s

<http://www.pacificforest.org/services/faqs.html> (good list of questions)

<http://www.farmcreditus.com/maine/notebook/L3/manageland.htm> (good)

<http://www.landtrust.org/ProtectingLand/EasementInfo.htm>

<http://napalandtrust.org/CE.html>

http://outreach.ecology.uga.edu/tools/farmland_study_.html (good study but big file)

Landowner Satisfaction

Vermont Study-The Impact of Vt's Farmland Conservation Program on Program Participants

<http://www.vlt.org/aft.html> (7 pages)

California study Part 3 Landowner satisfaction-

<http://www.cacities.org/userfiles/godoc/CAFarmersConservEasements-3.pdf> (18 pages big file)

California study Part 1-

<http://www.cacities.org/userfiles/godoc/CAFarmersConservEasements-1.pdf> (12 pages medium file)

California study Part 2 Landowners, programs and counties, Why landowners sell-

<http://www.cacities.org/userfiles/godoc/CAFarmersConservEasements-2.pdf> (19 pages really big file)

Business Planning

<http://ohioline.osu.edu/cd-fact/1101.html> (good overview)

<http://www.sbaer.uca.edu/Resource/index.html#plan>

Retirement Planning

<http://ohioline.osu.edu/b862/index.html> (good site)

<http://www.farmcentre.com/english/downloads/components.pdf> (good overview)

Financial

<http://www.mtlandreliance.org/tax.htm>

Legal

<http://www.cei.org/pdf/1339.pdf> (lots of information)

New Farmer links (New Farmer resources, not much on easements)

Growing New Farmers <http://gnf.bigmindcatalyst.com/cgi/bmc.pl?page=pubpg1.html&node=1009>

California <http://www.californiafarmlink.org/#casestudies> (brief mention of easements)

Cornell- http://www.cals.cornell.edu/agfoodcommunity/afs_temp3.cfm?topicID=350

<http://www.nyfarmlink.org/>

Iowa - <http://www.extension.iastate.edu/bfc/>

Northeast SARE <http://www.uvm.edu/~nesare/>
