Request for Applications

2022 Forest Conservation Easements for Land Trusts Program

The Land Trust Alliance (Alliance), with support from Governor Kathy Hochul, the New York State Department of Environmental Conservation (DEC) and the New York State Legislature, is pleased to announce a first round of competitive land trust grants through the Forest Conservation Easements for Land Trust Program (FCELT). This new public-private partnership is funded through the state Environmental Protection Fund (EPF) and administered by the Alliance, in coordination with the DEC.

Up to $1.35 million in funding is available through the 2022 grant round which will be awarded in the fall of 2022. Grant awards are contingent upon the receipt of state funds.

The program has a two-step application process which includes a letter of interest and a full application. **Letters of interest are now being accepted and are due by May 16, 2022.** Full applications are by invitation only. Applicants invited to submit a final application will be notified by June 13, 2022. Final applications are due by July 28, 2022.

Letters of interest and full applications must be completed through our online application and reporting system. Complete details about this grant opportunity including eligibility requirements and other program elements can be found below. Please review carefully as you evaluate whether your project is a potential fit.

Visit the FCELT webpage for more information including:

- 2022 Virtual Roundtables Schedule
- Resource Guide
- Frequently Asked Questions

The Alliance reserves the right to amend the request for applications specifications to correct errors or oversights, or to supply additional information, as it becomes available.

**Questions?** For questions about the program, please contact Jim Daus, New York Forest Conservation Easement Advisor for the Land Trust Alliance, jdaus@lta.org or 518-227-1318.

For questions about accessing the online system, please contact Katrina Howey, Grants Management Specialist, Land Trust Alliance at khowey@lta.org or 518-587-0932.

**Overview and Purpose**

The purpose of the Forest Conservation Easements for Land Trusts Program is to provide grants of up to $350,000 to fund the acquisition of conservation easements by land trusts accredited by the Land Trust Accreditation Commission on forestland in New York State that increase the pace of forested land conservation to combat climate changes.

According to the 2020 New York State Forest Action Plan, “Privately owned forestlands cover 13.62 million acres and represent 74 percent of New York’s forests. 10.2 million acres are
considered family-owned or non-corporate forests. Nearly 700,000 private forest landowners provide the public with the benefits of clean air and water, carbon sequestration, wildlife habitat, and a forest-based economy." The plan identifies some of the biggest threats to keeping privately owned forests healthy and intact as follows: development pressure, inconsistent or lack of professional forest management practices, succession planning, and invasive pests which are often exacerbated by climate change and have the potential to devastate or completely wipe out entire tree species.

Land trusts are uniquely positioned to help private forest owners protect and manage their lands while also educating the public about the benefits of forest conservation to the environment and economy.

Land trusts applying for FCELT grants will be asked to articulate how and to what extent the proposed easement acquisition provides community benefits, advances ecosystem services and climate resilience, and furthers the goals/strategies identified in the New York State Open Space Plan, the New York State Wildlife Action Plan, the New York State Forest Action Plan and/or other local, regional or statewide land protection plans. Applicants should utilize relevant scientific data to make the strongest possible case for their project’s climate resilience benefits including The Nature Conservancy’s Resilient Land Mapping Tool.

**Applicant and Project Eligibility Requirements**

- Applicant is accredited by the Land Trust Accreditation Commission.
- Applicant's service area includes the State of New York and project site is located within the State of New York. These funds are intended for projects and activities within the State of New York.
- Land Trust must be accredited by the Land Trust Accreditation Commission. However, applicants do not need to be members of the Land Trust Alliance to apply for or receive grant funding. Non-member land trusts are encouraged to learn more about the benefits of Land Trust Alliance membership.
- Projects must provide permanent protection via conservation easements consistent with the provisions of Environmental Conservation Law Article 49 that satisfy the minimum deed requirements contained in the Term Sheet in Appendix C. The easement must explicitly run in perpetuity, and the land trust must be the intended long-term easement holder. The conservation easement must be registered with DEC.
- Forests (as defined in the Term Sheet in Appendix C) must cover at least 50% of the protected property. Lands used for agriculture cannot exceed 25% of the protected property. Sustainable forest management must not be a prohibited use.
- If timber harvests are permitted, they must be conducted pursuant to a forest management plan under the supervision of a certified/consulting forester and approved by the easement holder (except in limited cases for on-site uses of timber harvested from the protected property).
- Acquisitions must be able to close by the end of 2024. Only projects that have not yet closed prior to signature of the Grant Agreement are eligible. It is recommended projects
do not close until all required pre-closing items on the Due Diligence Checklist in Appendix B are satisfied as failure to complete them may jeopardize awardee’s eligibility to receive grant funding.

**Costs**

Costs eligible for reimbursement or match include:

1. Easement acquisition;
2. Recording fees;
3. Related staff time;
4. Indirect or overhead costs for awardees that have a written indirect or overhead cost policy;
5. Environmental assessment;
6. Title Insurance Premiums;
7. Baseline documentation reports;
8. Surveys;
9. Appraisals;
10. Awardee’s legal counsel;
11. Management plans;
12. $10,000 towards stewardship endowments;
13. $3,000 towards legal defense fund contributions; and
14. Other fees or expenses necessary and appropriate for the completion of a transaction.

Costs that are not eligible for reimbursement or match include:

1. Any costs incurred prior to or after the grant period noted below;
2. General operating support;
3. Fees for Alliance trainings and events;
4. Accreditation fees;
5. Awardee’s Insurance premiums, including Terrafirma;
6. Property taxes or other state/local/federal taxes including real estate transfer taxes;
7. Buildings and heavy equipment;
8. Staff costs for stewardship operations; and
9. Landowner’s cost for legal or financial advisors.

All costs, whether to be granted or counted as match, must be incurred within the grant period (January 1, 2022 – December 31, 2024), however, applicant’s expenditures are made so at applicant’s sole risk prior to completion of the grant agreement.

**Evaluation Process**

An independent review team of volunteers and Alliance and DEC staff will review letters of interest and full applications. The committee will evaluate and score each letter of interest considering the project’s overall design. Those projects that score highest will be invited to submit a full detailed application. Project Evaluation Criteria is included as Appendix A to this document. Applications must include all required content of the online application. All committee decisions are final.
**Match Requirements**

Applicants must provide a match equal to at least twenty-five percent (25%) of the grant funds requested. For example, a $50,000 grant would require a match of $12,500 for a total project cost of $62,500; $50,000 of which would be funded by the grant and $12,500 of which would be match.

Match may include appraised value of any donation of the conservation easement by the landowner, other funds raised by the applicant to assist in the purchase of the conservation easement, and any expense eligible for reimbursement listed above that is not reimbursed by the grant, including related staff time. Matching funds must be non-state funds. Source and status of the match must be explained in the letter of interest. If grant funds are awarded, verifiable documentation of the match is required prior to closing.

**Grant Awards and Payments**

The review team will score full applications and designate a portfolio of projects to support in 2022. Projects that are selected will receive a grant agreement from the Alliance. This will ask awardees to agree to:

- Minimum conservation easement deed terms (Appendix C);
- Grant reporting requirements;
- Periodic phone check-ins with the Alliance and/or DEC;
- Potential site visit(s);
- Use of photographs and other media; and
- Completion of scope, schedule, and status report within 60 days.

Upon receipt of the completed grant agreement, the Alliance will work with each awardee to develop a scope, schedule, and status report for each project. The scope and schedule are intended to match, to the greatest extent possible, the awardee’s existing project benchmarks and due diligence/reporting requirements.

Grant funds will be distributed in four payments, the first portion upon the receipt of a signed grant agreement and finalization of scope, schedule, and status report which will detail the payment requirements, amounts, and approximate release dates specific to each project. Payments generally will occur as the following benchmarks are reached:

1. Finalization of grant application, scope, schedule, and status report
2. Certain due diligence benchmarks to be determined
3. At closing for direct costs of closing
4. Post-closing payment when all due diligence and post-closing requirements are complete

A checklist of required documentation is available; see Appendix B. Please note that in addition to the Alliance’s review and approval of all documents, DEC may review and approve the following documents: survey maps, appraisals, title insurance policies and conservation easements including Schedules A and B (described in the Term Sheet attached as Appendix C).

**Reporting Process**

Consistent with the agreed-upon scope, schedule, and status report, awardees will submit grant reports for the project. The scope/schedule/status report, and grant agreement will specify
reporting deadlines. Failure to complete required reports may result in a awardee forfeiting a portion of or all grant funds awarded.

**Conservation Easement Standards**

Appendix C of this document provides applicants with a conservation easement Term Sheet. The sheet includes specific conservation easement provisions that must be followed to be eligible for FCELT funds and to ensure consistency with the Alliance’s and DEC’s goals for the program.

**Publicity**

All applications submitted and all related funding agreements and reports may be subject to disclosure under the Freedom of Information Law. The title you give your project may be used in press releases, reports, and other public documents produced by the Alliance and DEC. If you are concerned about confidentiality, select a project title that is descriptive but does not reveal the exact property or landowner name, and please inform the Alliance of the confidential nature of the project.

As FCELT is a publicly funded program, the landowner and awardee will be required to acknowledge that certain details of the transaction will be shared with the public and all details may be disclosed to the public under the Freedom of Information Law. New York State will announce all its grant awards. Announcements will give the name of the property or project (sometimes property names are replaced by a project name), a very general location and the grant amount. They do not list the property owners’ name(s) unless otherwise directed to do so.
Appendix A:

Complete Project Evaluation Criteria

Note: Criteria marked with a ^ will be prioritized in the letter of interest stage.

Ecosystem Services and Resilience Values: This considers the project’s ability to provide ecosystem services and resilience to climate change including those measured by the Resilient Land Mapping Tool and, where relevant, considers additional measures of long-term climate resilience.

- What ecosystem services does the project offer? ^
- To what extent does the project provide climate resilience benefits not adequately captured in the Resilient Land Mapping Tool framework? To what extent does the applicant clearly articulate these benefits? ^
- To what extent does the project provide resilience to extreme weather events? ^
- What is the project’s exact score for resilient land, using the Resilient Land Mapping Tool? ^
- To what extent is the project exposed to risks that could limit resilience, such as sea level rise, impacts to resilient landscapes or likely future development that could block connectivity?
- To what extent does the project strategically leverage resilience across a larger area, such as by enhancing connectivity or removing a specific threat to landscape-scale connectivity and/or resilience?

Conservation Values: This considers the project’s overall existing and future conservation benefits.

- What is the project’s size and landscape setting? To what extent is/are the landscape setting(s) under-represented among existing conserved lands in the DEC administrative region? Have these landscape settings experienced high levels of land use conversion? ^
- How does the project address existing conservation priorities as identified in the New York State Open Space Plan, the New York State Wildlife Action Plan, and the New York State Forest Action Plan or other established conservation plans? ^
- How great is the risk of forest conversion, division, or fragmentation? ^
- How well does the applicant address proposed, current, and significant former uses on the protected property? ^
- What are the project’s principal conservation values? How durable are these values likely to be over time? Do proposed conservation restrictions adequately allow for necessary adaptation as the climate changes?
• What rare or significant species, habitats or natural features are present? Reference NY Natural Heritage Program, New York Wildlife Action Plan, species listed as threatened or endangered under the federal Endangered Species Act and/or included on New York State's Endangered, Threatened and Special Concern Species List.

• To what extent does the project fill a gap in existing conservation efforts?

Feasibility: This considers the project’s technical design and likelihood of success.

• Does the project meet or exceed the eligibility requirements? ^

• How likely is the project to be completed within the grant period? ^

• What significant complicating factors (title, financial, environmental, technical or logistical) exist? How likely are these factors to delay or undo the project? ^

• Does the applicant have capacity, expertise and/or partnerships commensurate to the proposed project? ^

• Is the proposed budget well researched (e.g., likely to appraise as anticipated) and supported and appropriate to the scale of the project? ^

Stewardship: This considers land management and stewardship, both for current and desired future conditions.

• How likely are the project’s values to persist or be impaired over time in light of a changing climate? Does the project design and strategy allow for the dynamic stewardship necessary for climate challenges and adaptation? If timber harvest is contemplated, how will it be consistent with climate resilience?

• If the management of the protected property includes projects that actively involve the applicant (e.g. restoration projects, invasive removals, technical assistance, etc.), does the applicant have relevant and sufficient expertise and capacity to steward the projects? Has the applicant demonstrated a viable strategy for addressing the project’s stewardship expectations?

• How are the applicant’s stewardship resources sufficient for the proposed project, what method or benchmark was used, and how likely is the applicant to have secured such stewardship resources at the time of closing?

Organizational Focus: This considers the degree to which the project advances the applicant’s commitment to incorporating forest conservation and climate resilience as a conservation strategy and organizational priority.

• Does the organization have a track record of forest protection or stated organizational focus on forest conservation?

• Does the project specifically advance an organizational goal?

• Does the project have potential to catalyze additional climate resilience-focused and
forest land protection work and is there indication the applicant will prioritize such work?

- Does the project provide opportunities for public or landowner engagement around issues of forest stewardship or climate resilience? Does the applicant indicate an intention or plan to undertake such engagement?

**Leverage:** This considers the degree to which the project will efficiently use funds and meets or exceeds the minimum match requirement. Applicants should demonstrate they will work diligently to locate and secure leveraging funds.

- Are matching funds in place, or a plan to meet the match requirement provided?

**Community Benefits:** This considers the project's benefits to communities including climate resilience-related community benefits.

- Does the project directly build community resilience to climate impacts? Examples could include but are not limited to: securing or strengthening community access to water; protecting cold water streams; decreasing risk from and/or enhancing resilience to flooding, wildfire or other hazards; and bolstering sustainable, local economic activities.

- Does the project entail meaningful collaboration with local communities? Have they been engaged in the project’s conception, design and intended outcomes? Have they invested time, money or other resources?

- If the project includes or prohibits public access, does it do so appropriately (does it provide new public access, formalize and protect current (informal) public access or buffer adjacent lands that offer public access)?
Appendix B:

Due Diligence Check-list

The Alliance will use this information, in collaboration with the New York State Department of Environmental Conservation (DEC) and awardees, to measure progress on deliverables that will trigger grant payments. Please note that in addition to the Alliance’s review and approval of all documents, DEC may review and approve the following documents: survey maps, appraisals, title insurance policies and conservation easements.

During Due Diligence Period

Title

- Preliminary title report and relevant supplements/updates. Awardee provides an analysis of title exceptions and plan to remedy.
- Landowner owns all mineral rights – YES__NO__
- Landowner owns all timber rights – YES__NO__
- Mortgage(s) and/or other liens exist on the protected property – YES__NO__
  o If YES, state plan to subordinate
- Third-party rights to access or use protected property – YES__NO__
  o If YES, state purpose of lease and term.
- Can landowner provide, via easement, legal access for awardee to monitor protected property? YES__NO__

Contract Documents

Provide at least one:

- Fully executed Purchase and Sale Agreement
- Option or landowner letter affirming intent to sell or bargain sale easement and timing

Draft Conservation Easement

- Follows term sheet provided

Maps

- Awardee provides map of parcel with:
  a. Awardee name, date, project title,
  b. North arrow/legend,
  c. Graphical scale
  d. Title exceptions,
  e. Infrastructure.

- Landscape map showing adjacent conserved lands, major landscape features, etc.
- Must be at scale that adequately reflects project size and detail

2022-23 FCEL T RFA Appendix B
• Should be submitted as a PDF

**Appraisal**

• Must be prepared by Certified General Appraiser
• USPAP appraisal report commissioned after easement language has been reviewed and approved.
• Appraisal Review (desk review)
• Timber cruise and/or carbon stocking information as applicable.

**Environmental Assessment**

• All awardees must provide an environmental assessment report of existing property conditions prior to conservation easement acquisition.
• Sources of information should include interviews with the landowner and any tenants, public records including environmental websites and databases, title reports and appraisals, and any known reports or studies of the protected property.
• Awardees should use their professional expertise when completing the report.

**Survey**

• Must be in accordance with the Code of Practice for Land Surveys adopted by the New York State Association of Professional Land Surveyors
• Legal description must match deed
• Encroachments or other concerns must be identified
• Property subdivisions (if applicable) must be shown
• Must be certified to the: a) Awardee; b) New York State Department of Environmental Conservation with Grant Number Listed; and c) Title Insurance Policy holder with Title Policy Number Listed
• Title commitment must be provided at time of survey map review
• Map title block must contain DEC unique grant ID and identify that purchase is pursuant to the grant program

**Match**

• Identifies sources, status and amounts

**Management and Stewardship**

• Management Plan or Stewardship Plan, or summaries of such intended plans, if applicable.
• Quantifies awardee's annual stewardship costs; identifies methodology(ies) used to estimate such costs, consistent with Alliance guidelines
Approximately 60-30 Days Prior to Closing

- Board resolution approving the acquisition
- Escrow information, including company name, individual contact, agent’s address, telephone, email address and wiring instructions.
- Final draft of conservation easement and Notice of Grant, and any other instruments to be recorded at closing, including any deeds of right or other instruments required by funders.
- Forest Management Plan, if applicable
- Evidence of all match funding secured and available for deposit into escrow before or at closing.
- Baseline documentation report to be signed by landowner or if conditions prevent, schedule for finalizing.*
- Outstanding items from list above

At Closing

- Executed escrow instructions.
- Executed conservation easement
- Executed Notice of Grant.
- Executed settlement statement.
- Executed real estate tax form(s).
- Executed mortgage and/or other lien subordination documents, if any.
- Any other instruments recorded at closing.
- Final title report and commitment.
- Documentation of all match and reimbursable costs.

Post-Closing

- Final settlement statements, title policy and recorded documents. Confirmation and documentation that deed recorded at County Clerk's office.
- Confirmation from the awardee that it has recorded the acquisition in the National Conservation Almanac, the National Conservation Easement Database, NY Protected Area Database and other relevant data repositories, as appropriate, along with all required information on spatial extents, transaction details and funding information.
- Management Plans, if applicable.
- Forest Management Plan, if applicable. If commercial timber harvests are conducted, they must be done under the supervision of a certified/consulting forester.
- Proof of stewardship contribution

*NOTE: For the FCELT program, the Baseline Documentation Report, along with the standard sections, must describe the project’s climate resilience characteristics.
Appendix C:  
Term Sheet  
Forest Conservation Easement for Land Trusts  
NYS EPF Funded Grants  
March 9, 2022

Introduction: The purpose of this term sheet is to provide guidance to applicants as to those conservation easement elements that New York State Department of Environmental Conservation (“DEC”) requires, at a minimum, to be addressed in the final conservation easement document for the Forest Conservation Easement for Land Trusts program. Exact wording is given in the few instances where exact wording is required, otherwise the element should be worded as determined by the awardee's attorney and other professional advisors. DEC and The Land Trust Alliance will be reviewing the wording of the conservation easements. See Appendix A for a list of resources to assist with Conservation Easement drafting.

All awardees must ensure the following:

1) Conservation Easement is under provisions of New York State Environmental Conservation Law (ECL), Title 3 of Article 49 and is in perpetuity.
2) Forests must cover at least 50% of the Protected Property. Lands used for agriculture cannot exceed 25% of the Protected Property.
3) Land Trust must be accredited by the Land Trust Accreditation Commission; in the event the awardee fails to maintain or otherwise loses its accredited status, the State may require that the Conservation Easement be assigned to an accredited land trust or eligible public body.
4) Awardees should confer with their legal counsel, be familiar with Land Trust Alliance Practical Pointers documents, and Grantors should be made aware that they cannot rely upon any other guidance than that of their own legal counsel.

Conservation Easement must use the structure outlined below:

- Recitals
- Definitions
- Purposes Of The Conservation Easement
- Restricted Uses And Practices
- Grantee's Affirmative Rights
- Grantor's Permitted Uses and Rights
- Enforcement
- Administrative Provisions

Conservation Easement Minimum Requirements

Please Note:

- The parenthetical “(mandatory)” means the element must be addressed by the Conservation Easement and worded as determined by the awardee's attorney and other professional advisors.

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• Exact language is required when indicated by ("exact").
• The elements labeled “(optional)” may be disregarded unless desired by awardee or the contemplated use will occur on the Protected Property (in which case the element must be addressed).
• For all other elements, awardees may draw from their own templates.

1) Recitals
   a. Describe the Protected Property subject to this Conservation Easement and as defined in Schedule A and set forth encumbrances and exceptions in Schedule B attached to the Conservation Easement (mandatory).
   b. Set forth the intention to preserve and limit the uses and development of the Protected Property in perpetuity (mandatory).
   c. Provide that Grantee is authorized to accept and hold the Conservation Easement to protect property important to the conservation of natural resources under the provisions of New York State ECL, Title 3 of Article 49 (mandatory); and
   d. Include this clause: WHEREAS, (exact) the Grantee of this Conservation Easement received funding for its acquisition from New York State Environmental Protection Fund through a grant, FCELTP-R1-2022-#, from the Forest Conservation Easements for Land Trusts program established to support land trusts to acquire such conservation easements over predominately forested parcels.

2) Definitions
   a. “Grantee” (exact). The Party identified as Grantee in the preamble, its officials, employees, contractors, successors, assigns, authorized agents, personal representatives, tenants, and occupants, and where specifically set forth herein licensees and lessees of Grantee.
   b. “Grantor” (exact). The owner(s) in fee simple of the real property that is subject to this Conservation Easement. The term "Grantor" shall include Grantor, its successors, heirs and assigns, and its authorized agents, personal representatives, tenants, occupants, contractors, and employees, and where specifically set forth herein licensees and lessees of Grantor.
   c. “Protected Property” (exact). The lands subject to this Conservation Easement, more particularly described in Schedule A.
   d. “Forestland” (exact). Land at least 10 percent stocked by forest trees of any size.
   e. “Forests” (exact). An ecosystem characterized by a more or less dense and extensive tree cover, often consisting of stands varying in characteristics such as species, composition, structure, age class, and associated processes, and commonly including meadows, streams, fish, and wildlife.
   f. “Forest Management” (exact). Forestry practices, including harvesting of a forest, woodland or plantation and other types of cuttings planned as part of a deliberate forest management program, the construction, alteration or maintenance of wood roads, skidways, landings and fences, and related research and educational activities.
   g. “Sustainable Forestry” (exact). Forest Management activities that achieve sustainability by practicing a land stewardship ethic that integrates the production of an economic return through sustainable commercial production and harvesting of Forest Products with the conservation of soil, air and water quality, Biological Diversity,
wildlife and aquatic habitat, recreation potential, and aesthetics. Forest Management
activities on the Protected Property are considered sustainable if long-term harvest
levels, although variable, are consistent with appropriate growth and yield models in
an approved Forest Management Plan or Forest Certification Program.

h. “Forest Management Plan” (exact). A working guide, prepared by a professional
forester, that allows the landowner to maximize a mix of forest benefits, including
wildlife, timber, recreation, aesthetic value and other benefits.

i. “Forest Certification Program” (exact). A market-based, non-regulatory forest
conservation tool designed to recognize and promote environmentally responsible
forestry and sustainability of forest resources. The certification process involves an
evaluation of management planning and forestry practices by a third-party according
to an agreed-upon set of standards. These standards include measures to protect
water quality, biodiversity, wildlife habitat, species at risk and forests with exceptional
conservation value.

j. “Forest Products” (exact). All products derived or extracted from the forest on the
Protected Property, including, without limitation, ginseng, trees, logs, poles, posts,
pulpwood, firewood, chips, seeds, pine straw, stumps, seed cones, shrubs,
herbaceous vegetation, barks, limbs, branches, gum, tree sap, and mushrooms.

k. “Biological Diversity” (exact). The variety and abundance of life forms, processes,
functions, and structures of plants, animals, and other living organisms, including the
relative complexity of species, communities, gene pools, and ecosystems at spatial
scales that range from local to regional to global.

l. “Agricultural Use” (exact - only for Conservation Easements that allow for agriculture).
Those activities necessary to: produce Crops, Livestock and Livestock Products; or
use the Protected Property as a “Farm Operation” to the extent permitted by this
Conservation Easement; or be actively enrolled in any federal or state or local program
whose intent is to temporarily suspend (for a specified period of one or more years or
crop seasons) the production of Crops, Livestock and Livestock Products for the
stipulated purpose of soil and water conservation, wildlife habitat, or similar
conservation purpose; or manage the Property or a portion thereof in a fallow or
otherwise idled manner provided such management is contained in a conservation
plan.

m. “Farm Operation” (exact - only for Conservation Easements that allow for agriculture).
Shall be defined pursuant to Article 25-AA of the AML, or such successor law as
enacted or amended. In the event that this definition or all of Article 25-AA (and all
such successor laws) shall be repealed, then the definition existing at the time of
repeal shall serve thereafter OR (mandatory) insert the actual current definition
wording.

n. “Crops, Livestock and Livestock Products” (only for Conservation Easements that
allow for agriculture) (exact) shall be defined pursuant to Article 25-AA of the AML
(Agriculture and Markets Law 301), or such successor law as enacted or amended. In
the event that this definition or all of Article 25-AA (and all such successor laws) shall
be repealed, then the definition existing at the time of repeal shall serve thereafter OR
(mandatory) insert the actual current definition wording.
3) Purpose
   a. **Limit division and forest fragmentation** (mandatory). To prohibit division of the Protected Property to keep the Protected Property intact and under one ownership to prevent the fragmentation of the Protected Property.
   b. **Limit use and development** (mandatory). To limit the development of the Protected Property and prevent residential, commercial, industrial and Agricultural Uses of the Protected Property, except as permitted by this Conservation Easement.
   c. **Conserve natural resource values** (mandatory). To protect the scenic and natural resource values associated with the Protected Property including: native flora and fauna and the ecological processes that support them; diverse forest types and conditions; wildlife habitat; soil productivity; biological diversity; water quality; and wetland, riparian, and other aquatic habitats as well as the scenic vistas of undeveloped land from public roads.
   d. **Ensure sustainable forestry and prevent conversion of Forestland** (mandatory if the Grantor wants to retain the right to harvest timber). Prohibit conversion of forest to other uses; ensure that the Protected Property remains in a healthy, forested condition; to ensure that the Protected Property remains available for Sustainable Forestry and the associated production of Forest Products; and to promote and support the continued management of the forest resource on the Protected Property.
   e. **Ensure Agricultural Use is consistent** (mandatory only for conservation easements that allow for agriculture) with conservation values of this Conservation Easement. To allow for Agricultural Use consistent with the Conservation Easement.
   f. **Uses Not otherwise conveyed or limited** (mandatory). Include a clause that allows such uses if they are consistent with the Conservation Easement. For such uses that have more than de minimis adverse impact to the Forests on the Protected Property, Grantee shall provide DEC written notice and the opportunity to comment within thirty (30) days of receipt of such notice. NOTE for awardees: Any reference herein to uses being allowed “with Grantee approval,” or when “consistent with the Conservation Easement” (or similar language) shall be at the Grantee’s sole discretion and in writing.

4) Restricted Uses, Improvements, and Practices – Avoid restrictions that the land trust cannot monitor and enforce.
   a. **Retention of forest resource** (mandatory). Except as provided by this Conservation Easement, the existing Forestland of X acres shall be maintained as Forestland and not converted to non-forestry purposes.
   b. **Prohibit residential, commercial, or industrial uses** (mandatory) except as permitted by this Conservation Easement (see section 6). Such exceptions may include a building area, farm stand, maple syrup production, sustainable forestry, or other similar uses, provided that any such use (and access thereto) must be located to prevent or minimize impacts to Forestland and must be located on the perimeter of Protected Property or other areas consistent with the Conservation Easement as permitted by Grantee, all to protect the Protected Property from conversion to other land use types.
   c. **Prohibit recreation and education improvements except as permitted by the Conservation Easement.** Improvements must be located to prevent or minimize impacts to Forestland and be consistent with the Conservation Easement in Grantees sole discretion.
d. **Development and building rights extinguished** (mandatory) except as permitted by the Conservation Easement.

e. **Prohibit or limit division or conveyance of rights** (mandatory) to keep the Protected Property intact and under one ownership and prevent fragmentation and to prohibit modification or conveyance of easements, right of ways or similar documents unless the proposed conveyance is consistent with the Conservation Easement.

f. **Limit improvements, buildings and structures** (mandatory) to existing improvements and prohibit constructing new improvements except limited improvements associated with: a) Forest Management improvements; b) Agricultural Use structures, as defined in 9 NYCRR § 577.2, in conservation easements allowing agriculture; and c) those improvements specifically agreed to with the Grantor and as consistent with 6.d. herein.

g. **Limit utilities and utility access** (mandatory). Limit the construction or presence of utility improvements (including wind and solar power), and equipment (including towers), and access thereto to those approved by Grantee or for service to existing or new building areas (intent is to limit and specifically define existing and future utility and utility access development) consistent with New York State ECL, Title 3 of Article 49, the purposes of the Conservation Easement, and in support of Grantor’s permitted uses. Any such use (and access thereto) must be located to prevent or minimize impacts to Forestland and must be located on the perimeter of Protected Property or other areas consistent with the Conservation Easement as permitted by Grantee.

h. **Forest products harvesting** (mandatory where forest harvests are permitted), except as noted in Section 5.a.i. below, requires a Forest Management Plan (“FMP”) submitted to and approved by the Grantee, and the FMP must be prepared and overseen (including harvest managed) by forester who is certified by the Society of American Foresters or successor organization as is later created.

i. **Prohibit all types of waste disposal on the Protected Property** (mandatory) except for forestry and agricultural handling of animal and vegetation waste in accordance with sound agricultural and forestry practices and in a manner consistent with a management plan and all applicable local, state or federal laws and regulations.

j. **Prohibit mining or limit mining to only sand and gravel used on the Protected Property** (mandatory). Prohibition shall be against mining of any size. Sand and gravel extraction may be permitted, but size and location shall be defined, exclude riparian areas, and be for use on the Protected Property only. If the Grantor wants to take a tax deduction, there should be a prohibition on all surface mining, including for any sand and gravel extraction.

k. **Prohibit new dams** (mandatory). Limit to existing use only.

5) **Grantee’s Affirmative Rights**

   a. **Right to enter** (mandatory). Grantee shall have the right of entry to the Protected Property for inspections upon reasonable notice. [OPTIONAL - with ________ (__) hours prior notice to Grantor. Written notice not required and no notice required when monitoring is done via remote aerial monitoring)]. Give Grantee the right to enter the Protected Property for monitoring and inspections, including use of motor vehicles on existing paths, trails, and roads sufficient to support the motor vehicle use without
damage to the Protected Property. If immediate entry is required to prevent, terminate, or mitigate a violation, then such notice shall not be required.

b. **Emergency actions** (mandatory). Provides Grantee the right, at its discretion, to enter the Protected Property in an emergency. Such right shall not impose any obligation or legal responsibility on Grantee, except as to conditions created by Grantee.

c. **Right to provide for public access and use** (optional). May include but not be limited to hiking, biking, snowshoeing, cross-country skiing, horseback riding, hunting, trapping, fishing, camping, snowmobiling, boating and use of motor vehicles.
   i. Non-motorized access and recreational uses
   ii. Motorized access and recreational uses – identify roads and trails
   iii. Public camping
   iv. Public hunting, fishing and trapping
   v. Public access to adjoining protected lands

d. **Public recreational amenities and improvements** (optional). Right for the Grantee to construct, install and improve amenities for public use associated with the acquired recreation rights. Can include, but not limited to roads, lean-tos or weather shelters, boat launches, campsites, trails, bridges, signs, fences, gates and barriers, etc.

e. **Management of public recreational rights** (optional). It is the responsibility of Grantee to manage the public recreation on the Protected Property.
   i. Recreation management plan may be prepared to manage public use
   ii. Include costs required for shared road maintenance.

f. **Grantee’s duties and responsibilities for roads, trails, bridges, culverts, parking lots, boat launches and campsites open to public use** (optional).
   i. Repair and correct those amenities solely for public use
   ii. Public use suspended due to weather
   iii. Public use suspended due to lack of funding

g. **Right to manage fish and wildlife resources** (optional). Provides Grantee the right with Grantor approval to conduct fish and wildlife projects on the Protected Property.

h. **Right to conduct biological surveys, scientific studies and forest health monitoring** (optional). Provides Grantee the right to enter the Protected Property to survey for biodiversity, monitor for forest health and conduct other studies with Grantor approval.

i. **Marking boundaries and providing keys and combinations** (optional). Provides Grantee the right to identify the Protected Property as having a Grantee Conservation Easement. It requires Grantee to provide keys to Grantor for any locked gates erected by Grantee.

j. **Grantee’s right to sand and gravel** (optional). Allows Grantee to use sand and gravel, with defined size and location, from the Protected Property for construction and maintenance of any recreational amenities with Grantor approval. If the Grantor wants to take a tax deduction, there should be a prohibition on all surface mining, including for any sand and gravel extraction.

6) **Grantor’s Permitted Uses and Rights** – Avoid permitted rights that the land trust cannot monitor and enforce.

a. **Forest management activities** (mandatory). Conduct Forest Management under a professional FMP consistent with the Conservation Easement.
i. Approval of Forest Management activities. Grantor’s right to conduct Forest Management activities on the Protected Property shall be subject to prior written approval of the Grantee, as follows:

1. Commercial or non-commercial timber stand improvements and harvesting operations shall be carried out in accordance with (i) a third-party Forest Certification Program (i.e., Forest Stewardship Council, Sustainable Forestry Initiative; American Tree Farm Program), or (ii) a FMP and harvest plan prepared and overseen (including harvest managed) by a forester who is certified by the Society of American Foresters or successor organization as is later created, or has a bachelor degree in forestry from a school accredited by the Society of American Foresters, or a Cooperating Consulting Forester with the DEC, or a qualified forester approved by the Grantee in writing in advance. Harvesting operations will comply with the most recent New York State Forestry Best Management Practices for Water Quality or its equivalent. Provided however, that no Forest Management or harvest plan or approval shall be required to harvest up to ten (10) standard cords of firewood annually for Grantor’s personal use, to remove trees that have fallen, dead, diseased, or dangerous, or for the cutting of trees to establish trails or access roads for Forest Management activities.

2. Permanent Forest Management improvements (allows for new and existing improvements associated with Forest Management activities only, where these improvements prohibit residential use.) Requires notification of Grantee, and review and approval by Grantee to exercise right.

3. Identify the types of Forest Management activities the Grantor wants to conduct and determine the associated improvements that would be required. For example, syrup production (Maple, Birch etc) may require building a “Sugar House”.

4. Temporary Forest Management improvements (allows for clearly defined temporary Forest Management improvements). For example - use of a portable sawmill.

b. Agriculture (mandatory for conservation easements that allow for agriculture). Grantor may continue to use a portion, limited to no more than twenty-five (25) percent of the Protected Property for Agriculture Uses. The Agricultural Use of the Protected Property shall not interfere with Grantee’s Affirmative Rights and be consistent with the Conservation Easement. Prohibit conversion of Forestland to agriculture even if agriculture not using 25%.

c. Right to lease (optional). Only applicable to situations where the Grantor wants to retain the right to lease the Protected Property for limited durations for outdoor recreation (such as hunting) or agriculture (and only on portion of the Protected Property where agriculture is allowed). Must be consistent with the Conservation Easement.
d. **Non-forestry improvements; outparcels; building areas; access and utilities** (mandatory). Identify all existing improvements and any future requirements. The Conservation Easement may provide for the following:
   
i. **Existing or new residential buildings, garages, barns, utilities, roads, drives, and septic systems, etc.** Identify existing or planned improvements within specific limited building areas, outside of forested areas or otherwise located to minimize impacts to forested areas and other conservation values.
   
ii. **Outparcels** - Not encumbered by the Conservation Easement. Outparcels must be on perimeter of the Protected Property and not be on Forestland.
   
iii. **Buffers for new improvements, waterbody and wetland buffers.** Must comply with all federal, state and local laws/restrictions regarding new structures. No improvements in areas designated as undevelopable, Critical Environmental Areas or Special Treatment Areas (i.e. areas with unique geological features, wetlands or habitat for endangered species) as depicted in the baseline documentation report.
   
iv. **Access road, improvements and utility corridors.** Existing rights-of-way to utilities, adjacent properties, and outparcels, or existing or new rights-of-way to building areas and for Agricultural Uses and improvements, and for forestry access (for heavy equipment).

e. **Emergency actions** (mandatory). Grantor retains the right to take emergency actions to protect the Protected Property.

f. **Gates, barriers, fences; keys, combinations; marking boundaries** (mandatory). Grantor retains rights to re-post boundaries, erect gates etc. Newly marked boundaries must be confirmed in advance with Grantee. (optional) The Parties shall provide one another with keys or combinations necessary to open gates and to allow access through such barriers.

g. **Preserving water quality; dams and water impoundments** (mandatory). Grantor may take actions to preserve water quality and reduce erosion with Grantee approval.

h. **Right to sand and gravel** (optional). Subject to the limitations of 2.i. Shall only be for use on the Protected Property of the Grantor. If the Grantor wants to take a tax deduction, there should be a prohibition on all surface mining, including for any sand and gravel extraction.

i. **Natural resources benefits** (optional). Grantor may, with Grantee approval, create and retain rights to ecosystem services benefits, credits, and compensation. The use must be consistent with the Conservation Easement which shall be determined at Grantee’s sole discretion. (e.g., carbon credits)

j. **Right to convey the entire Protected Property as one unit only** (mandatory). Grantor may sell, transfer, or otherwise convey the entire Protected Property as one entire unit only, subject to the Conservation Easement. There may be rare instances where it may be appropriate to draft the Conservation Easement to allow for a portion of the Protected Property to be subdivided and conveyed to the Grantee or a third party. These instances will be handled on a case-by-case basis.

k. **Right for limited renewable energy improvements** (mandatory if renewable energy is permitted) consistent with the Conservation Easement at Grantee’s sole discretion and located to prevent or minimize impacts to Forestland on the Protected Property.
7) Enforcement
   a. **Inspections** (mandatory).
   b. **Notice to cure** (mandatory).
   c. **Dispute resolution** (mandatory). No arbitration.
   d. **Force majeure/acts of third parties** (mandatory).
   e. **Failure to act** (mandatory).
   f. **DEC right to enforcement** (mandatory). DEC has the right but not the obligation for enforcement. If Grantee fails to regularly inspect or enforce the terms of the Conservation Easement, or if Grantee is no longer accredited by LTA commission, then DEC has the right but not the obligation to inspect and enforce the Conservation Easement. DEC has the same right to enter the Protected Property as the Grantee under Section 5(a) of this Conservation Easement.
   g. **Restoration** (mandatory). Grantee has the right to restore Protected Property

8) Administrative Conditions
   a. **Construction and interpretation** (mandatory). Distinguishes between titles for ease of document use and the Conservation Easement content/provisions.
   b. **Baseline documentation** (mandatory). The requirement for a report of the current condition (baseline) of the Protected Property, at the time of closing, for monitoring purposes. Can be at Grantee's sole expense. In the event that seasonal conditions prevent the completion of a full baseline documentation report by closing, the Grantor and land trust sign a schedule for finalizing the full report and an acknowledgement of interim data [that for donations and bargain sales meets Treasury Regulation §1.170A-14(g)(5)(i)] at closing.
   c. **Notice, Review and Approval Process** (mandatory). The procedure for review and approvals and who officially written notice should be sent to.
   d. **Regulatory Authorities, Compliance with Law** (mandatory). Clarifies that Conservation Easement does not replace compliance with laws.
   e. **Reconveyance If Grantee ineligible** (mandatory). Should the Grantee at any time become or be deemed by a court to be ineligible to hold the Conservation Easement for any reason, then Grantee shall immediately assign the Conservation Easement to another appropriate organization at no charge.
   f. **Severability** (mandatory). If any part of the Conservation Easement is struck down by a court, the remainder of the Conservation Easement stays enforceable.
   g. **Amendments or Modifications** (mandatory). Required by New York State ECL, Title 3 of Article 49 allows for future amendments to the document with conditions and upon review and written approval of DEC and Grantee.
   h. **Proceeds and Extinguishment clauses** (mandatory). Repeat verbatim the Treasury Regulations.

DEC in consultation with the Land Trust Alliance designed this material to provide accurate, authoritative information about the subject matter covered with the understanding that DEC and the Land Trust Alliance is not engaged in rendering legal, accounting, tax, or other professional counsel. If a land trust or individual requires legal advice or other expert assistance, they should seek the services of competent professionals.