



**Agriculture
and Markets**

Community Gardens Task Force

Meeting Discussion Guide

November 1, 2023

Richard A. Ball
Commissioner

Agenda

- Introductions and updates
- Review meeting minutes
- Presentations on land protection mechanisms
 - Land Trust Models led by Catherine Hall, Senior Vice President and Chief Operating Officer, New York Restoration Project
 - Conservation Easements led by David Behm, NYS Department of Agriculture and Markets
 - Soil and Water Conservation Districts (SWCD) led by Brian Steinmuller, NYS Department of Agriculture and Markets and Nick Rowell, Warren County SWCD
- Discussion
- Review next steps

State Updates

- Ag Resources Dashboard
- Soil Testing Initiative
- Community Gardens Leadership Certification Program

Land Trusts

New York Restoration Project

- NYRP's Land Trust was created as a response to an emergency. In 1999, there was a mayoral decision to put city-owned lots up for auction for housing development without any formal review.
- NYRP and the Trust for Public Land joined together to protect these lots by brokering a deal with the city to purchase 114 gardens at market rate.

New York Restoration Project

- NYRP's land trust properties are protected through the purchase agreement with the EDC as open public space as long as NYRP continues to maintain the properties in good faith. These properties cannot be sold.
- The properties purchased by the Trust for Public Land were transferred to the Bronx Land Trust, Manhattan Land Trust, and the Brooklyn-Queens Land Trust.

New York Restoration Project Cont.

- For a community garden to participate in a land trust, success would require a willing municipal partner (local/state) as well as financing for acquisition, and sustainability
- This is an appropriate tool for the preservation and growth of community gardens since it provides full land protection that secures community and incentivizes investment (private & public)
- A replicable model could be developed through experience and lessons learned

Conservation Easements

Environmental Conservation Law

§ 49-0301. Declaration of policy and statement of purpose.

The legislature hereby finds and declares that in order to implement the state policy of conserving, preserving and protecting its environmental assets and natural and man-made resources, the preservation of open spaces, the preservation, development and improvement of agricultural and forest lands, the preservation of areas which are significant because of their scenic or natural beauty or wetland, shoreline, geological or ecological, including old-growth forest, character, and the preservation of areas which are significant because of their historical, archaeological, architectural or cultural amenities, is fundamental to the maintenance, enhancement and improvement of recreational opportunities, tourism, community attractiveness, balanced economic growth and the quality of life in all areas of the state.



Environmental Conservation Law

§ 49-0303. Definitions.

When used in this title:

1. "Conservation easement" means an easement, covenant, restriction or other interest in real property, created under and subject to the provisions of this title which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, archaeological, architectural, or natural condition, character, significance or amenities of the real property in a manner consistent with the public policy and purpose set forth in section 49-0301 of this title, provided that no such easement shall be acquired or held by the state which is subject to the provisions of article fourteen of the constitution.



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Environmental Conservation

§ 49-0305. Conservation easements; certain common law rules not applicable.

1. A conservation easement may be created or conveyed only by an instrument which complies with the requirements of section 5-703 of the general obligations law and which is subscribed by the grantee. It shall be of perpetual duration unless otherwise provided in such instrument.

<snip>

3. (a) A conservation easement shall be held only by a public body or not-for-profit conservation organization, except that the state shall not be authorized or empowered to acquire or hold any conservation easement which is subject to the provisions of article fourteen of the constitution.

<snip>

4. A conservation easement shall be duly recorded and indexed as such in the office of the recording officer for the county or counties where the land is situate in the manner prescribed by article nine of the real property law. <snip>

5. A conservation easement may be enforced in law or equity by its grantor, its holder or by a public body or any not-for-profit conservation organization designated in the easement as having a third party enforcement right, and is enforceable against the owner of the burdened property. <snip>



How Might a Community Garden be Protected by a Conservation Easement?

- Community garden advocate would approach landowner to discern:
 - willingness to encumber property with a conservation easement
 - how landowner will be compensated: paid for cash sale or seek charitable deduction on Federal income tax return for donation or neither – any “quid pro quo” arrangement is not appropriate
 - if landowner wishes to continue to own subject property after conservation easement has been conveyed
- Community garden advocate would inquire with potential Grantee (or holder of the conservation easement) candidates – either “a public body or not-for-profit conservation organization” – to discern if protection of a community garden is of interest to each such entity

How Might a Community Garden be Protected by a Conservation Easement?

- Selected Grantee proposes the conservation easement language that enables community garden use of the property
- Landowner conveys conservation easement to Grantee
- Landowner may wish to sell or donate the property to the community garden advocate following conveyance of the conservation easement

Considerations on the Use of Conservation Easements to Protect Community Gardens

- Is subject property in public or private ownership?
 - *Public entity may be unwilling to convey a conservation easement, especially to a private Grantee.*

Considerations on the Use of Conservation Easements to Protect Community Gardens

- Is landowner willing to convey a conservation easement? If so, to whom?
 - *Any given landowner may not be willing to convey a conservation easement due to their desire to let future owners decide how they wish to use the property.*
 - *Some landowners may be willing to convey a conservation easement, but they may opt not to do so if the Grantee is a public body, while others may opt not do so if the Grantee is private.*

Considerations on the Use of Conservation Easements to Protect Community Gardens

- Does the landowner require payment for a sale of the conservation easement? Or, does the landowner intend to alternatively seek a charitable deduction on their Federal income tax return for the year in which the easement is conveyed?
 - The landowner's decision will likely affect the specific language within the easement document, particularly if a Federal income tax deduction is expected or if public monies are used to fund the purchase of the conservation easement.

Considerations on the Use of Conservation Easements to Protect Community Gardens

- Will landowner want to continue to own the property after conveying the conservation easement?
 - Some landowners may choose to convey the conservation easement with the expectation that some entity will then buy out their remaining ownership interest in the subject property. If so, this would be an excellent opportunity to the community garden advocates to purchase (or perhaps accept the donation of) the easement-encumbered property or to find another appropriate entity to do so.

Considerations on the Use of Conservation Easements to Protect Community Gardens

- Does a community garden fit the mission/vision of the potential Grantee?
 - This is a critical consideration of any not-for-profit conservation organization as Grantee.
- Should the conservation easement incorporate a Third Party Right of Enforcement? If so, who?
 - Some landowners may insist on this provision, particularly if the Grantee is a not-for-profit conservation organization.

Soil & Water Conservation Districts

Soil & Water Conservation Districts (SWCD)

- Conservation Districts can perform various services in support of community gardens and urban farms.
- SWCD services and capacities are unique throughout the state. However, a growing number of SWCDs are developing programs in support of urban agriculture and community gardens. SWCDs can support community gardeners and urban farmers with soil testing as well as planning and designing of watering systems. SWCDs utilize established planning and design practices to NRCS Standards when appropriate.

Soil & Water Conservation Districts (SWCD)

- In February 2022, the SWCC held a SWCD panel to discuss services and programs. Please see the attached set of minutes with presentations or feel free to view the meeting at:
<https://www.youtube.com/watch?v=TzePjyn5pOY&list=PL7R0tOxZLuMRdcstuxIysVPLXAejGkUcW&index=18>

Soil & Water Conservation Districts (SWCD) Cont.

- Soil Testing Services
 - Heavy metals
 - Nutrients
 - pH
 - Salinity
 - Soils Texture
 - Reports – identifies any issues or problems with remedial recommendation

Soil & Water Conservation Districts (SWCD) Cont.

- Site Assistance
 - Initial consultations
 - Site visits
 - Best Management Practices for the improvement of soil health/quality and mitigation of potential risk/exposure to contaminants

Soil & Water Conservation Districts (SWCD) Cont.

- Irrigation
 - Water sources and project planning
 - Supplies and materials
 - Rainwater harvesting design and implementation
- Green Infrastructure/Invasive Species removal
 - Pollinator/herbaceous flower/shrub beds
- Raised Garden Beds
 - Supplies and materials
 - Mulch/Soil/Compost



Other Models to Note

Other models to note

- NYC Garden Review Process
 - Mandates that NYC Parks must communicate with garden representatives to suggest a potential alternative site.
- Uniform Land Use Review
 - NYC Council members and Community Boards, along with Borough Presidents, are specifically empowered to speak on behalf of their constituents when City agencies are required to go through the Uniform Land Use Review Procedure (ULURP) process.

Discussion

Opportunity

- Create a comprehensive land access resource toolkit that mutually benefits municipalities and community gardens, including but not limited to:
 - model guidance and laws that local government entities can adopt into their land use planning;
 - tools for growers to better understand and advocate for protection mechanisms that best fit their needs;
 - a template Memorandum of Understanding (MOU) that community gardens and municipalities can utilize to facilitate better collaboration for long-term partnerships.

Discussion Questions

- In addition to education and guidance to facilitate collaboration between community gardens and government entities, what purpose should this toolkit serve?
 - What components should this toolkit include to best serve its purpose?
 - Are the bullets listed on the previous slide the right things to include, or are there additional topics to prioritize instead?
 - What format is most user-friendly for both community gardeners and local government entities?

Next Steps

Next Steps

- We plan for presentations on additional models (including NYC Garden Review Process and Uniform Land Use Review) and focus more on discussion in the next meeting
- Annual meeting dates:
 - First Wednesday of every November from 12:00 – 3:00 PM
 - First Thursday of every January from 12:00 – 3:00 PM
 - First Monday of every April from 12:00 – 3:00 PM

Thank you!