

Term Sheet Crosswalk (2023 Round)
Forest Conservation Easement for Land Trusts
NYS EPF Funded Grants
Revised 8/31/23

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 the [FCELT webpage](#) 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.
- 5) 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.

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.
- 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.

Term Sheet Crosswalk

Please provide the section number in the conservation easement (ie. IX.1.a.ii) where the following items can be found in your draft CE. If buried, please also highlight the language with a comment in the CE. Both this Crosswalk and the CE should be submitted in MS Word via the Sharepoint link provided to you separately by the Alliance. Please check the FAQs on the [FCELT webpage](#) regularly to see if any of these Terms have been updated.

CE Element	CE Section
1) Recitals	
a. Describe the Protected Property subject to this Conservation Easement and as defined in Schedule A and set forth encumbrances and exceptions to title 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: (exact) Said Conservation Easement is acquired with funding received by the Grantee under a grant funded by the New York State Environmental Protection Fund in accordance with Round 2 of the Forest Conservation Easements for Land Trusts Grant Program 2023 (“Grant”), Grant No. FCELT-R2-2023-(County#), from the Land Trust Alliance to the Grantee, awarded under contract C012269 between the New York State Department of Environmental Conservation and the Land Trust Alliance, for purposes of forest conservation. Upon recording of this deed, all use of the property is and shall remain subject to the terms and conditions described in the Notice of Grant attached hereto as Schedule _and recorded herewith.	
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 ensures that the Protected Property remains in a healthy, forested condition and includes (individually or integrating a mix of) the following: conservation of soil, air and water quality, Biological Diversity, wildlife and aquatic habitat, recreation potential, and aesthetics and/or the production of an economic return through	

<p>sustainable production and/or harvesting of Forest Products. Forest harvest 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.</p>	
<p>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.</p>	
<p>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.</p>	
<p>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, pinestraw, stumps, seed cones, shrubs, herbaceous vegetation, barks, limbs, branches, gum, tree sap, and mushrooms.</p>	
<p>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.</p>	
<p>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.</p>	
<p>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.</p>	
<p>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.</p>	
<p>3) Purposes Of the Conservation Easement</p>	
<p>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.</p>	
<p>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.</p>	
<p>c. Preserve and Protect Conservation values (mandatory). To protect the conservation 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.</p>	

<p>d. Ensure sustainable forestry and prevent conversion of Forestland (mandatory). Prohibit conversion of forest to other uses; ensure that the Protected Property remains in a healthy, forested condition; (if the Grantor wants to retain the right to produce Forest Products) 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.</p>	
<p>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.</p>	
<p>f. Uses Not otherwise conveyed or limited (optional). Include a clause that allows such uses if they are consistent with the Conservation Easement (note - if this optional term is used, then the concept in the following sentence is mandatory). 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.</p>	
<p>4) Restricted Uses, Improvements, and Practices – Avoid restrictions that the land trust cannot monitor and enforce.</p>	
<p>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.</p>	
<p>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.</p>	
<p>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.</p>	
<p>d. Development and building rights extinguished (mandatory) except as permitted by the Conservation Easement.</p>	
<p>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.</p>	
<p>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.</p>	
<p>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.</p>	
<p>h. Forest products harvesting (mandatory where forest harvests are permitted), except as noted in Section 6.a.i.1 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</p>	

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.	
i. Prohibit all types of waste disposal on the Protected Property (mandatory) except for forestry and agricultural handling of animal and vegetation waste which shall be 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. Note: If the Grantor wants to take a tax deduction, there likely 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. <ul style="list-style-type: none"> 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. <ul style="list-style-type: none"> 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). <ul style="list-style-type: none"> 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.	
<p>6) Grantor’s Permitted Uses and Rights – Avoid permitted rights that the land trust cannot monitor and enforce. Outparcels not encumbered by the Conservation Easement must be on perimeter of the Protected Property and not be on Forestland.</p>	
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:	
<p>1. Commercial or non-commercial timber stand improvements and commercial or non-commercial 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. Any Forest Certification Program or FMP must submitted to and approved by the Grantee. 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 third-party Forest Certification Program or FMP 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.</p>	
<p>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.</p>	
<p>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”.</p>	
<p>4. Temporary Forest Management improvements (allows for clearly defined temporary Forest Management improvements). For example - use of a portable sawmill.</p>	
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; 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. 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.	
iii. 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 (mandatory). Grantor may take actions, including the maintenance or removal of existing dams and impoundments, to preserve and enhance 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.	
6) 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 Land Trust Accreditation 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.	
i. Grantor Covenants (mandatory). Must include a statement that the Protected Property is free from encumbrances, except as provided on Schedule B attached hereto and made a part hereof.	

DEC in consultation with the Land Trust Alliance designed the FCELT Term Sheet 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.