Getting Involved

A Community Trail Handbook for Landowners

A Joint Publication of
Greenway Conservancy for the Hudson River Valley
and Parks & Trails New York
A letter of invitation

Dear Potential Trail Partner:

We invite you to join us in the exciting efforts now underway to establish a system of recreational trails in the Hudson River Valley for the enjoyment of your family, friends, and neighbors. As a private landowner, your support is critical to the success of hundreds of state and community trail initiatives throughout New York. Trails in the Hudson Valley already provide world-class recreational opportunities for our residents and an inspiring experience for tourists. With your help it can be even better.

Imagine a system of trails throughout the Hudson Valley where local routes tie seamlessly into regional corridors. It will be a network of trails connecting residents to their downtowns, waterfronts, parks, open spaces, and historic sites while also linking them to the significant resources of neighboring communities. This trail network will provide routes for our children to walk to school in safety. It will provide inviting places for families to walk, hike, and bike for better health. It will also strengthen local and regional economies through increased property values, bolstered tourism, and new business investment drawn to quality communities.

Reading this handbook will help answer many of your questions about hosting public trails on your land. While the handbook explains the many tangible benefits you may receive through allowing trail access, ultimately it is your sense of community spirit that matters most.

State agencies, local trail organizations, land trusts, and regional programs such as the Hudson Valley Greenway, as well as non-profit trail partners such as Parks & Trails New York, can help answer other questions you may have. We hope you become a local partner in one of these important quality of life improvements for our great state.

Sincerely,

Mary Mangione, Acting Executive Director
Kevin J. Plunkett, Chairman

Greenway Conservancy for the Hudson River Valley

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WHAT IS THE HUDSON RIVER VALLEY GREENWAY?

The Hudson River Valley possesses world-renowned scenic, natural, historic, recreational, agricultural, economic, and cultural resources. To acknowledge this and to help Hudson Valley communities become better places to live and work, the New York State Legislature passed landmark legislation in 1991 establishing a Hudson River Valley Greenway.

The goals of the Greenway legislation are to protect and enhance the region’s unique heritage, increase awareness and appreciation of its resources, and enhance the sustainability of local economies. The legislation also aims to promote a broader identity for the Hudson River Valley’s communities and resources by encouraging municipal cooperation and tourism development on a regional level. To help promote and establish a linked identity among communities and their resources, the Greenway legislation calls for the designation and development of a regional network of trails, the Hudson River Greenway Trail system.

Specifically, the Greenway legislation is designed to assist and encourage communities to incorporate the following into local decision making:

- natural and cultural resource protection
- regional planning
- economic development
- public access to the river
- heritage and environmental education

A STRICTLY VOLUNTARY PROGRAM

All aspects of the Greenway program are voluntary and designed to honor the New York State tradition of home rule by putting the needs of local communities first. Extensive public participation is an integral part of the program.

ONE PROGRAM IMPLEMENTED BY TWO ORGANIZATIONS

The Hudson River Valley Greenway Program is administered jointly by the Greenway Communities Council and the Greenway Conservancy for the Hudson River Valley. Both organizations provide technical assistance and small grants for planning.

“There is delight in the hardy life of the open.

There are no words that can tell of the hidden spirit of the wilderness, that can reveal its mystery, its melancholy and its charm.

The nation behaves well if it treats the natural resources as assets which must turn over to the next generation increased and not impaired in value.”

~ Theodore Roosevelt
Twenty-sixth U.S. President (1901-09)
1858-1919

Creating a Hudson River Greenway Trail System

The Greenway area is defined as the Hudson River coastal areas of Bronx and New York Counties, the entire counties of Albany, Columbia, Dutchess, Orange, Rockland, Westchester, Ulster, the town and village of Waterford in Saratoga County and Greene County, excluding any area within the Catskill Park.
BENEFITS OF A GREENWAY TRAIL SYSTEM

- Provides a variety of close-to-home recreational opportunities for you, your family, and your community.
- Enhances the quality of life.
- Provides safe places to walk or bike to work, school and local stores.
- Preserves community character and offers people a new way to discover the special places where they live.
- Provides an enjoyable place for people of all ages to experience the great outdoors and learn about the natural world.
- Creates an opportunity for attracting tourists and new businesses.
- Strengthens a sense of connection to the Hudson River and Hudson River Valley as a region.
- Strengthens community cohesion by bringing people together to plan, build, and use the trail.
- Promotes greater appreciation and protection of the Hudson River Valley’s natural, cultural, historic, recreational, scenic, and agricultural resources.
- Serves as critical routes for wildlife and protects stream corridors.

and capital projects that reinforce the principles listed above. Local communities and groups can work with either organization or both organizations, depending on their needs, priorities, and interests.

The Greenway Communities Council works primarily at the municipal level with individual communities, groups of communities, and counties to assist in the development of planning projects that support the Greenway criteria and contribute to the development of a region-wide agreement, called the Greenway Compact. Greenway Communities Council projects can include comprehensive plans, main street revitalization plans, open space plans, transportation studies, and agricultural protection plans, as well as zoning ordinances, community design guidelines, and other implementation techniques.

The primary purpose of the Greenway Conservancy for the Hudson River Valley is to work with a broad range of partners: municipalities, non-profit organizations, citizen groups, and representatives of the tourism and agricultural industries. The Greenway Conservancy focuses, in particular, on development of the Hudson River Valley Greenway Trail System, other efforts to enhance meaningful public access to the Hudson River, and regional tourism and agricultural initiatives.

The establishment of the Hudson River Greenway Trail System relies on the cooperation and generosity of local landowners. Participation in the Hudson River Greenway Trail program is strictly voluntary. The property rights and concerns of private landowners are paramount, as is maintaining traditional uses of the land. The Hudson River Valley Greenway legislation authorizing the development of the Greenway Trail therefore expressly forbids the Greenway Conservancy from “taking” any land to create the trail. In addition, it does not establish any land use control on private lands or impose additional or more restrictive environmental or zoning regulations.
University’s Granting of Trail Easement Creates a Popular Campus Amenity

On sunny spring days, many of St. Bonaventure University’s 2800 students can be found bicycling, rollerblading, or strolling along the multi-use Alleghany River Valley Trail...

They don’t have to go far to get to the trail. Nearly half of the 5.6-mile recreational trail, which runs along the Alleghany River between the communities of Olean and Allegany in New York’s southern tier, is located on the St. Bonaventure campus.

St. Bonaventure was initially approached about the trail in the early 1990’s by Greater Olean, Inc., a local civic improvement organization. St. Bonaventure President Dr. Robert Wickenheiser was open to the idea but wanted to see what the administration, faculty, and students had to say about the trail and what other universities’ experience with trails had been.

An informal survey of other universities that had allowed public trails on their property turned out to be pivotal to the development of the Alleghany River Valley Trail on the St. Bonaventure campus.

“Every university we contacted was extremely positive and strongly endorsed having a trail on campus,” says Dr. Donald L Zekan, Vice President for Business and Finance at St. Bonaventure, who has been involved with the trail’s development from the beginning.

With the results of the survey so positive, the University went ahead and signed a trail easement agreement with the Town of Allegany, the official sponsor of the Alleghany River Valley Trail.

Today, the trail is very popular with both students and community members.

“My wife and I used to take our dogs down by the river before it was a trail and we never saw anyone. It was like the community had turned its back on the river,” says Dr. Zekan. “Now, we see people down there all the time enjoying themselves. People are rediscovering what a great resource the river is.”

Breaking ground at Bonaventure: From left, St. Bonaventure University Dr. Robert Wickenheiser, Mayor John Ash, Legistator Catherine Young, Assemblywoman Pat McGee, Greater Olean, Inc. President John Stevens, trail developer Joseph Higgins, and Allegany Supervisor Daniel Eaton
A COMMUNITY-DRIVEN PROCESS

The process for establishing sections of the Greenway Trail System is community driven and completely voluntary. Each community is distinct, with different goals and opportunities, so each community must determine for itself the types of use, character, and routing of its trail. Some communities may decide to establish a multi-use trail for hiking, bicycling, cross-country skiing, and horseback riding. Others may decide that a narrow dirt walking path through the woods is more appropriate.

LOCAL TRAIL PARTNERSHIPS AT HEART OF EFFORT

Strong local partnerships are the key to successful trails. The best partnerships include broad community interests, including local government, business, community organizations, schools, and private landowners.

The Greenway Conservancy supports the formation of local trail partnerships, usually in the form of trail committees, and provides technical assistance and resources throughout the trail exploration and development process.

Local trail committees most often take the lead in guiding the process to establish local trails. They introduce the trail concept, gauge community interest, and build support. They also work to engage additional partners – such as municipal or county parks departments, departments of public works, sheriff’s departments, or others – whose involvement can greatly contribute to the long-term success of trails.

Local trail committees may be spearheaded by a municipality, community organization, non-profit organization, or interested citizens and may function either in an informal manner or as a more official committee of a municipal or county board or department.

STEPS IN PLANNING A SUCCESSFUL TRAIL

A community workshop early in the trail planning process is extremely helpful to inform the public about the trail and get valuable input regarding concerns and issues. Other steps in trail planning include inventorying resources, mapping, deciding on trail uses, looking at trail route options, establishing the roles of various partners, setting goals and timetables, and developing a trail management and maintenance plan.

The Greenway Conservancy has developed trail planning recommendations. Contact your local trail committee or the Greenway Conservancy for a copy.

GETTING INVOLVED

Good trail planning ensures that the concerns of various community interests, especially landowners, are met. Your local trail committee offers a good opportunity for you to join your neighbors, friends, and community leaders in planning trails in your community. The committee will help
coordinate the role of various partners – municipality, county, state, land trust, chamber of commerce, community organization, landowners – in designing, developing, negotiating access, managing, and maintaining the trail. The committee will work closely with landowners on trail design and routing decisions that might affect their property, as well as decisions relating to development of trail maintenance and management guidelines.

Local trail committees usually organize community planning workshops to facilitate community involvement. Your participation in these workshops can set the tone for open and productive communication among various community members and interests.

If you would like to find out if your community has an active trail committee and how to get more involved, the Greenway Conservancy will provide you with contacts. If a committee doesn’t currently exist, and you are interested in helping to form one, the Greenway Conservancy will be happy to work with you.

**ESTABLISHING TRAILS WITH THE SUPPORT OF PRIVATE LANDOWNERS**

Local trail committees generally route their trails through public lands. However, in areas where that is not possible, private landowners’ generous permission for a segment of trail to cross their properties will greatly enhance the Greenway Trail System’s integrity.

Initially, landowners unfamiliar with public trail systems may be hesitant to allow a portion of their land to become part of the Greenway Trail System. However, landowners who have allowed access on other public trails in New York, both local and long-distance, have been quite satisfied with the arrangement.

Some examples of long-distance trails that cross private lands include the 150-mile Highland Trail in New York and New Jersey, the 300-mile Long Path through the Hudson Valley, the 800-mile Finger Lakes Trail in western New York, and the 1,800-mile Appalachian Trail, which crosses the Hudson River at Bear Mountain. Several shorter trails in the region that benefit from private landowners’ permission to access their property include the Hyde Park Trail, Village of Croton trail system, the LaGrange Wappinger Creek Trail and the D&H Canal trail in Kingston and the towns of Hurley and Ulster.

If you would like to talk with one of these landowners or others who live along trails, please contact your local trail committee or the Greenway Conservancy and we’ll put you in touch with them.

Chapter 3 of this publication, beginning on page 14, addresses some common landowner concerns, including liability, privacy, vandalism, litter, safety, and other management issues.

**A SIGNIFICANT LEGACY FOR FUTURE GENERATIONS**

When you open a portion of your land to public use, you are bestowing a significant legacy that will enhance the quality of life in your community and the entire Hudson Valley today and far into the future. You will be creating a wonderful outdoor recreation amenity for you and your family without, in most cases, giving up any privacy, since trails can be located, designed, and maintained to provide continued privacy to private landowners. You may even benefit from some improvements to your property, such as a bridge to a previously inaccessible portion of your land.

A major goal of establishing the Greenway Trail System is to help maintain the natural beauty and economic vitality of the Hudson River Valley. The Trail will help build appreciation for the region and the river. In sharing a small part of your land, you will help strengthen the resolve of others to help care for the magnificent resources found here.
When they were approached in 1990 about allowing the Hyde Park Trail* — a 10-mile trail that connects the Roosevelt and Vanderbilt National Historic Sites — to cross their property, they were open to the idea but had some concerns about littering and illegal use of the trail by motorized vehicles. With this in mind, they granted a right-of-way trail easement on a ½-mile of woods road on their property that included a two-year renewable clause.

"The flexibility in the terms of the easement allayed our concerns and allowed us to test the waters," notes John.

Now, after eight years of satisfaction with the trail as a neighbor, the Goldens are taking steps to make the easement permanent. "Trail users are nice, responsible people. They take good care of the trail and respect the private residences along it. I'm happy to be able to share this marvelous place with as many people as possible," says John.

The Goldens, natives of the area, are proud of the legacy they're leaving behind. "We feel that we've made a significant contribution to the community. And we think the community feels that way, too."

*The Hyde Park Trail was developed and is maintained through a partnership of the Hyde Park Recreation Department, Adirondack Mountain Club, Scenic Hudson, National Park Service, Boy Scouts, Hudson Valley Railroad Society and the Winnakee Land Trust. The Goldens’ easement is held by the Winnakee Land Trust.

"As Hudson River Valley landowners, we've enjoyed sharing our corner of the world with trail users who appreciate its beauty and value. We encourage you to join with others in your community, as we did, to further the Hudson River Valley Greenway Trail System, for yourself, your children, and your grandchildren."

~ John and Gloria Golden
Landowner Opportunities

Flexible Options Tailored by You to Meet Your Particular Needs

Landowners interested in opening a portion of their land to public use have a number of options. These range from a simple, informal handshake to granting an easement or donating property. Most of these alternatives derive from the many different interests an owner has in a piece of land.

Think of owning land as holding a bundle of rights. A landowner may sell or give away the whole bundle, known in legal terms as the “fee simple interest” or just one or two of those rights. These may include, for example, rights associated with the use of the land such as the right to hunt or walk on the property. As a landowner, you may extend one or more of these rights to the general public while retaining other rights and setting limitations on specific uses.

No two landowner situations are alike; each landowner will have different goals and concerns regarding trail development. That’s why there are no set rules about how the Trail is planned, managed, or how trail access is obtained. The alternatives described here are flexible and can usually be creatively tailored to address your needs. Careful attention to the specifics of your situation, combined with guidance from your attorney and accountant, will likely yield the best results for you.

You have many alternatives when it comes to granting access to your property for a trail. If you are unsure about establishing a public trail on your property, we encourage you to start with one of the less permanent options. Then, as your confidence and satisfaction with the trail and the partnership grows, you can consider committing to a more permanent arrangement.

Working with Your Local Trail Partner

Different communities have created various trail committee and management structures. Therefore, the organization you will be dealing with regarding trail issues may differ from town to town and county to county. If you are considering allowing access to your land, you will most likely be discussing trail access alternatives and negotiating agreements with a representative from your local municipal government or local land trust, acting on behalf of the local trail committee.

Handshake Agreement

While local trail partners welcome long-term agreements, they are often happy to accept a simple “handshake” agreement. This option gives you full freedom to cancel the agreement at any time. It also may provide a comfortable way for you to ease into a more long-term relationship with your local trail partner.

Revocable Written Agreement

You can grant a revocable agreement to your local trail partner to use part of your property for specific purposes. Such an agreement gives permission for...
a particular activity (hiking) or group of activities (hiking, bicycling, and cross country skiing) on your land without granting any permanent access to the land. It is a temporary agreement which can be revoked at any time if circumstances change.

**EASEMENTS**

Many landowners find easements one of the most flexible and adaptable alternatives. Easements also may offer significant tax and financial benefits (see page 21). Easements are voluntary legal agreements between you and a local trail partner which establish certain rights or restrict certain activities or land uses. Landowners retain full title to the land and are free to sell, lease, and mortgage their property and pass it on to their heirs. An easement is recorded with the property deed at your local county clerk's office.

Although the majority of easements are permanent, term-limited easements are possible. However, only perpetual conservation easements qualify a landowner for income and estate tax benefits. If an easement is to be amended in the future, the original easement must contain an amendment clause.

There are two types of easements most commonly used by private landowners: trail easements and conservation easements.

**TRAIL EASEMENT**

Simple right-of-way trail easements establish rights to use a defined trail or corridor for a specific recreational purpose or purposes. For example, a trail easement may extend a right to the general public to use a limited and defined portion of land for hiking and cross country skiing. In granting a trail easement, you can restrict the specific uses of the trail corridor or require the local trail partner, the holder of the easement, to meet special management requirements such as landscape screening.

Some landowners prefer floating trail easements, which allow trails to be relocated within a certain section of their property. That way, as the use of your land changes, the location of the trail can be changed to accommodate your needs.

**CONSERVATION EASEMENT**

Landowners who want to further protect their land and potentially receive tax benefits may want to consider conservation easements. Conservation easements protect wildlife habitat, farmland, wetlands, scenic areas, or other special characteristics of the property which the landowner wishes to preserve. Conservation-minded landowners who have a desire to protect and enhance these resources and let others enjoy them may want to consider granting a conservation easement that also allows public use of a portion of the land for a trail.

Conservation easements can include any arrangements agreed to by the landowner and holder of the easement, including provisions for timbering, agriculture, and allowing a public access trail corridor. Conservation easements can create a very desirable trail buffer zone, protecting the trail from development and other uses incompatible with trail enjoyment, while providing the landowner with an extra measure of privacy from the trail.

For more information on conservation easements, contact the Greenway Conservancy, your local trail committee, or your local land trust. (See Appendix)

**LAND SALES OR DONATIONS**

Landowners may choose to donate or sell a portion of their land to establish a trail. In doing so, full ownership of the land, the fee simple interest, is transferred to the local trail partner, which then holds title to the land.

The ability of your trail partner to purchase land at full market value may be very limited. To facilitate a sale transaction, you may want to consider a "bargain" sale, in which you sell your land at less than its market value and donate the difference. You may also wish to consider donating full or partial interest in your land. Both bargain sales and outright donations may offer significant income, property, and inheritance tax benefits (see page 20).

**LIFE ESTATE**

Landowners may donate property to a trail partner and retain an interest in it that lets them continue to use it for the rest of their lives or some other fixed term. For example, Mr. and Mrs. Smith want to donate some of their property, part of which is an apple orchard, for use as a public trail. They can donate the land, yet still retain the right to maintain and harvest the apple trees until they die. Samples of revocable letters of agreement, trail easements, and conservation easements can be found in the Appendix, page 30.
Developer Views Trails As Quality of Life Amenity

Martin Ginsburg, owner of Ginsburg Development Corporation, a high-end residential development company based in Westchester County, considers himself a community builder...

All of his projects contribute to the community in a big way. Among the contributions of a recent project in the Village of Hastings is an easement which allows a trail to be built linking two nearby open space resources: Old Croton Aqueduct State Historic Park and a Village park.

River Point, a development of one- and two-family homes, is located close to Old Croton Aqueduct, a 26-mile multi-use trailway owned and managed by the NYS Office of Parks, Recreation and Historic Preservation. The Aqueduct is designated as part of the Hudson River Valley Greenway Trail System.

Mr. Ginsburg views trails as an important quality of life amenity. His company highlights the proximity of Old Croton Aqueduct in its marketing to prospective buyers and actively promotes it in the welcome packet new owners receive.

"Trails provide recreational opportunities which enable people to live a healthier lifestyle..." ~ Martin Ginsburg

Later, when one of the residents expressed concern about how close the trail was to his backyard, Mr. Ginsburg worked with the Trail Committee to erect a fence that more clearly defined the public area.

"A common concern about trails is security," notes Mr. Ginsburg. "Often, however, perceptions don't jive with reality. Any negative incidents that occur on a trail are almost certainly less than would occur on nearby streets which are just as publicly accessible."

"I use the Aqueduct. People who use local trails are mostly people who live in nearby communities," concludes Mr. Ginsburg.
Financial Issues and Potential Tax Benefits

Easements, land donations, and bargain sales may offer you reductions on federal and state income taxes, as well as on federal estate taxes and local property taxes. In some situations, donations and bargain sales may generate tax benefits that equal or outweigh what you may receive in a conventional sale.

It's important to keep in mind that tax benefits are not guaranteed and depend on a variety of factors, including surrounding real estate values, local development pressures, and variable market and assessment issues affecting property. However, many landowners have realized substantial tax savings from easements, donations, and bargain sales.

Before a donation takes place, landowners should get an appraisal from a NYS-certified appraiser. An appraisal establishes the property’s fair market value, the value of the trail corridor, and the tax benefits you may enjoy from the transaction. Landowners generally bear the cost of an appraisal, but can include it and other costs associated with completing the transaction in the value of the charitable gift or, if applicable, deduct it as a business expense. Landowners are responsible for complying with current tax regulations, obtaining a qualified appraiser, and supporting the value of the donation. However, your local trail partner — the recipient of your generous donation — can help guide you through the process.

In addition, be sure to seek the advice of other professionals, such as your accountant and attorney.

EASEMENTS

A conservation easement qualifies as an income tax-deductible charitable gift as long as it is perpetual and is donated “exclusively for conservation purposes” to a qualified recipient, as defined by Internal Revenue Code Section 170(h). According to the Code, “the preservation of land areas for outdoor recreation by, or the education of, the general public” is considered a conservation purpose.

To determine the value of a conservation easement, the appraiser determines the fair market value of the property with and without the easement in place. For example, Mr. and Mrs. Smith own 100 acres of woodland with a fair market value of $200,000. They decide to donate a conservation easement to their local land trust which limits future development to two additional residences and establishes a 25-foot wide public access corridor with a trail located within the corridor. An appraiser determines the fair market value of the property with the easement to be $150,000. Thus, the gross amount of the Smiths’ donation is $50,000, which can be used to reduce the Smiths’ adjusted gross income for tax purposes.

“Successful greenways grow out of the grassroots. They depend on local enthusiasm, local money, local leaders, local priorities, local agreements and local governments. They depend on highly motivated volunteers including individuals, groups and businesses. They are dependent, in short, on a strong sense of community responsibility and on the willingness of each community to link its destiny to that of its neighbors.”

~ David Burwell
President, Rails-to-Trails Conservancy, 1996
A gift of an easement may also help reduce estate and inheritance taxes on your property and may lead to a reduction in real property taxes. It’s a good idea to meet with your local assessor to discuss this potential benefit.

**DONATIONS OR BARGAIN SALES OF LAND**

An outright donation of land offers the maximum tax advantages, since you may be able to claim a tax deduction based on the full appraised value of your land. A gift of land also offers potential estate tax benefits. Donations and bargain sales may generate tax benefits that equal or outweigh what you may receive in a conventional sale.

A bargain sale is part donation and part sale and may entitle you to an income tax deduction for a charitable contribution and a reduction in capital gains tax. Capital gains must be calculated on the sale part of any transaction. A gain is recognized if the property is sold for more than its basis, usually equal to the original cost, plus improvements and minus depreciation. For bargain sales, the basis of the property must be allocated proportionately between the part sold and the part donated.

For example, Mr. and Mrs. Smith own a parcel of land with a fair market value of $200,000. Under a bargain sale, they might sell the property for $100,000, thereby “donating” the remaining $100,000. This would greatly decrease their capital gains tax and provide them with a $100,000 charitable tax deduction which will offset a varying percentage of their adjusted gross income for the current year and five subsequent years (see Tax Deduction Sidebar.)

**TRAILS AND PROPERTY VALUES**

Many landowners are concerned about the impact that a trail might have on the value of their property. National studies undertaken to assess impacts of trails on property value have found that property values typically increase slightly or remain constant. For example:

- **A 1993 National Park Service study conducted by the Pennsylvania State University and U.S. Department of the Interior, which conducted interviews with 663 property owners and 71 realtors and property appraisers along three trails, concludes that trail development does not have adverse effects on property values.**

- A 1998 study prepared by the Schenectady County Department of Planning on the impact of the 35-mile Mohawk-Hudson Bike-Hike Trail on adjoining residential properties concluded that, out of the 215 adjacent landowners who responded to the survey, the majority believed the trail increased or had no effect on the value of their property. In addition, 86 percent of landowners felt that the trail increased or had no impact on their ability to sell their homes.

- In Minnesota, a 1997 study on adjacent property owner perceptions of a trail within the Minneapolis/St. Paul area found that the majority of respondents thought the trail would increase or not affect the resale value of their property.

- **A 1997 survey of residents along the Iron Horse Trail in Contra Costa County, California found that one-third of the respondents bought their homes, in part, because of the trail. Most of the other respondents said the trail was neither a positive nor negative factor in their decision to buy their homes.**

Your trail partner or the Greenway Conservancy will be happy to provide you with a copy of these and other relevant studies.

**SEEK PROFESSIONAL ADVICE**

Because each landowner’s tax situation is unique, you’ll want to obtain up-to-date tax and legal advice from experienced professionals to accurately evaluate the tax benefits of any land transaction. Your local trail partner or land trust may be able to help and suggest professionals with experience in these types of land transactions.

**GETTING THE APPRAISAL RIGHT**

Internal Revenue Service (IRS) regulations require that all charitable contributions worth over $5,000 must be valued by a qualified appraiser. The IRS Code defines a qualified appraiser as one qualified to make appraisals of the type of property donated, but who is not one of the following: the taxpayer, a party to the transaction in which the taxpayer acquired the property, the public agency or nonprofit organization (local trail partner) receiving the donation, any person employed by or related to any of the foregoing persons, and any person whose relationship to the taxpayer would cause a reasonable person to question the independence of the appraiser.

The appraisal must be made no more than 60 days before the contribution date and no later than the due date for that year’s tax return. An appraisal summary (IRS Form 8283), must be attached to the landowner’s tax return and signed by the appraiser and the recipient of the donation.
Strong rural ethic behind permission for trail to cross private land

When advocates for the 300-mile Long Path in eastern New York first approached Mike Willsey about granting access to his land in 1993, they found a ready listener.

Mike, a 70-year-old retired farmer and a lifelong resident of rural East Berne in Albany County, had recently become interested in hiking, mostly in the Adirondacks, and liked the idea of walking out his door onto a trail.

Mike’s main concern was liability, but after learning about the protection New York’s Recreational Use Statute affords residents who allow recreational use of their land, he felt more comfortable.

Mike not only granted access, in the form of a revocable written agreement, but he personally contacted eight of his neighbors to convince them to grant access. Among these neighbors was a religious camp and several individuals with very large landholdings. Three weeks later, he had his neighbors’ permission and more than 20 miles of trail.

“If there’s a secret to my success, it’s to live in a place for 70 years and then ask permission,” laughs Mike.

Mike attributes his achievement, in part, to a strong rural ethic that traditionally has allowed access to private property for hunting and fishing.

The trail has become a real community effort. Local brownie and 4-H groups conduct regular trail clean-ups as community service projects. (Mike notes that almost all litter is found along public roads rather than on the trail.)

Also, as a result of the interest in the trail, the town of East Berne is acquiring open space easements to preserve the rural and agricultural character of the community.

Mike and his wife, Whilma, enjoy the contact with trail users and, as the trail goes right by their mailbox, they frequently get a chance to chat with hikers.

“We’ve found that people are at their best when on a trail. Hikers just don’t cause any trouble,” says Mike. “We’ve met a lot of really great people through the trail and our involvement with it.”

*The Willsey’s revocable written agreement is held by the NY/NJ Trail Conference, a federation of hiking and environmental organizations and individuals dedicated to building and maintaining trails and protecting open space in the New York-New Jersey region.*
Many landowners support the community trail concept but remain concerned about liability, vandalism, litter, privacy, and other management issues. Experience and numerous studies have shown these issues to be more perceived problems than actual problems. Nevertheless, the Greenway Conservancy and your local trail partner respect your concerns as a landowner and will work with you to plan, build, and manage the trail to minimize potential problems and maximize compatibility with your use of adjacent land.

TRAILS MAKE GOOD NEIGHBORS

Studies documenting actual experiences from around the nation and New York State demonstrate that well-planned and designed trails can be good neighbors and that living with trails can be highly rewarding. In the 1998 survey of residents along New York’s Mohawk-Hudson Bike-Hike Trail, the majority of respondents reported being satisfied with the trail as a neighbor.

LIABILITY

In thinking about whether to allow a trail to cross your land, it’s only natural for concerns about liability to

“People are different on a path. On a town sidewalk strangers may make eye contact, but that’s all. On a path like this they smile, say hello, and pet one another’s dogs. I think every community in America should have a greenway.”

~ Anne Lusk
Vermont [Stowe] greenway advocate, 1990
surface. You may wonder, "What if someone gets hurt? Can I be sued? Does my insurance cover this?" Luckily, mechanisms exist in New York to protect landowners.

New York’s Recreational Use Statute (NYS General Obligations Law subsection 9-103) limits the liability of landowners who voluntarily allow access to their land for certain recreational activities. These recreational activities include the most common trail activities such as hiking, bicycle riding, horseback riding, and cross-country skiing. The Recreational Use Statute offers an important measure of landowner liability protection.

The law applies to landowners whether or not they grant permission for use of their property, as long as the following two conditions exist: they do not charge a fee and do not maliciously fail to guard against hazards. If these conditions exist, the liability of landowners who allow access is no greater than landowners who post their property against trespass.

While the Recreational Use Statute provides protection from liability, nothing can prevent a suit from being brought against a landowner, even if it turns out to be groundless. Fortunately, homeowner insurance usually provides coverage to the owner if someone is injured on the property whether or not the person has permission to be there. If someone is hurt and makes a claim, the insurance company will "defend" the insured owner, which means that the company will select an attorney and handle any litigation. The concept of "residence" is usually interpreted broadly and includes surrounding grounds, other structures, and vacant land, as long as it is not actively farmed or used for timbering purposes. Landowners conducting active farming or timbering operations usually have farm owner commercial liability insurance.

The combination of the recreational use statute and coverage available to landowners in their own insurance policies provide a solid shield against the risk of litigation. In addition, your local trail partner should have liability or self insurance and may be able to name you as an "additional insured" on its policy. You may want to consult a lawyer for more detailed information and advice for your particular situation.

The Greenway Conservancy can provide a summary of the relevant case law to guide landowners and their lawyers toward an accurate understanding of the current state of the law.

SAFETY

Trails have excellent safety records compared to other public and private places. Although landowners are often apprehensive about trails bringing an increase in crime, four separate studies conducted between 1979 and 1997 on various trails across the country concluded that landowners adjacent to trails experience negligible crime as a result of trails. A 1998 study of 372 rail-trails nationwide – totaling together more than 7,000 miles of trail and more than 45 million estimated annual users – found that trails are among the safest places in communities. As for the safety of trail users, a study of the 1800-mile Appalachian Trail found that a person was more likely to be struck by lightning than be a crime victim on the trail.

Safety plans, including emergency response strategies, are an intrinsic part of any trail management plan and should be in place before opening the trail to the public. Your local trail partner will probably monitor the trail or arrange with another authority, such as the County Sheriff or local police, to monitor it. In many cases, community volunteers monitor, as well as maintain, local trails. Experience has shown that involved neighbors and nearby landowners, acting as the trail's local "eyes and ears," play a key role in maintaining a safe, enjoyable trail.

PRIVACY AND TRESPASSING

Trail use is a very directed, "through" activity, which means trail users tend to stay on a trail and not litter or enter adjacent property. In addition, trail users are usually respectful of private property and landowner privacy.

Your local trail partner will work with you to minimize the trail's impact on your activities and property by siting the trail away from areas of concern such as residences, agricultural fields, or other intensive-use areas. Trails are often located along property boundaries to provide optimum landowner privacy.

Natural barriers, topography, landscaping, and fencing, when necessary, can also buffer your residence and activities from trail users. Your local trail partner will also work with you to ensure that permitted trail uses comply with your wishes.

Education of trail users can prevent many trail problems. Your local trail partnership will help reinforce awareness of landowner concerns and trail use ethics. Trail users will be directed, through signs and printed material, to respect private property by entering at designated access points, staying on designated trails, and carrying out their litter. Your trail partner will let trail users know that public use of private lands is a privilege and that it is only through the generosity of private landowners such as yourself that many trails exist. In addition, the need for personal stewardship, for users to accept an ethical responsibility to the land and landowners and to care for the trail as if it were their own property, will be stressed. This type of personal appeal has worked successfully on many other trails.

A COMMITMENT TO MAINTAINING TRADITIONAL LAND USES

The Greenway Conservancy encourages local trail partners to maintain and foster traditional uses of the land such as agriculture, forestry, hunting, trapping, and fishing. Trails can be compatible with these uses and can serve to educate others about the many productive uses of the land. Signs and publications can contain special instructions concerning these uses.

LITTER AND VANDALISM

Most trail users are respectful and considerate of private property. As outdoor enthusiasts, they are interested in preserving the natural beauty of the area and maintaining recreational access to the landscape. Many trail users are in the habit of carrying trash bags with them, for their own use and to pick up other litter; many report that lately there has been far less trash to pick up. Proper signs, maintenance, and monitoring by your local trail partner and local volunteers can help promote well-kept trails.

MANAGEMENT RESPONSIBILITIES

As a landowner, you will be an active participant in all management decisions. Your local trail partner will usually be responsible for trail management and maintenance, including clearing, surface restoration, signs, monitoring, and safety, and will work closely with you in developing management and maintenance plans for the section of trail. Many trails are effectively managed through partnerships between landowners, private volunteers associated with a trails organization or friends group, and local and regional government. For example, the New York-New Jersey Trail Conference, a federation of more than 85 hiking clubs and environmental organizations and 10,000 individuals dedicated to building and maintaining marked hiking trails and protecting related open space in the bi-state region, has constructed and maintained over 2,000 miles of trails throughout the Hudson River Valley. Many shorter trails, such as the community trails in Nelsonville and the Horseman’s Trail in Sleepy Hollow, also enjoy strong volunteer participation.
CONSERVATION EASEMENT WITH TRAIL ACCESS

TRAIL ACCESS CONSERVATION EASEMENT

This trail access conservation easement is made and entered into the __ day of ___, 200__ by and between [name of Grantee] (hereafter referred to as “Grantee”), and [name of Grantor] (hereafter referred to as “Grantor”) for the purpose of granting to Grantee an easement to create a trail (the “Trail”) for the benefit of the public for access to the Trail Easement Area.

RECITALS

Whereas Grantor is the owner of certain real property commonly known as [address including the county] and more particularly described as [legal description including reference to recorded maps or deeds];

Whereas Grantee is a ________________ [describe the purpose of the organization if relevant];

Whereas Grantor desires to grant to Grantee an easement for the creation of a trail (the “Trail”) for the benefit of the public for access to a trail corridor; and

Whereas the Trail is intended to provide access to the Grantor’s property, and also to enhance local hiking and recreational opportunities.

NOW, THEREFORE, in consideration of $ _____, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Recitals. Each and every recital and representation of the parties set forth above, including those contained in the conservation easement, is relied upon by the parties as the consideration for the grant of rights and restrictions of use hereinafter contained and are incorporated herein with the same effect as if restated in their entirety.

2. Grant of Easement. Grantor hereby grants, transfers and conveys to Grantee, for the benefit of the public, the easement (the “easement”) for ingress, access and use by Grantee and the public owner and across the trail easement area.

3. Purposes. The Easement is established for [specify permitted activities]. Such permitted uses shall not include [specify]. Grantee shall have the right to regulate or restrict uses (including but not limited to those specific uses listed above) which Grantee determines to be unsafe or otherwise detrimental to the continued use and utility of the Trail or the condition of the Trail easement area.

4. Definitions.
   a. Conservation easement – shall mean a voluntary agreement between parties to restrict the use of real property by providing public access trails. This statutorily created device is meant to encompass the entire area being conveyed by the grantor, which incorporates any trail corridor, public access easement or buffer area, or public education facility that may exist.
   b. Public access area - shall mean any area of the conservation easement that is open to the public such as the trail corridor, public education facility or parking facility.
   c. Trail corridor - shall mean a narrow tract of land forming a passageway that shall be used for specified recreational trail activities.

5. Severability. Invalidation of any provision of this Easement of Way by court order, judgment, statute, or otherwise shall not affect the validity of the easement of way herein granted.

6. Insurance and Liability.
   a. Insurance. Grantee shall at all times be responsible for maintaining the Trail Access Area, including [specify specific areas], at its sole cost and expense.
   b. The easement of way and path shall be kept in a substantially natural state, used only for passage by pedestrians and never will be improved without Grantor’s prior consent; and
   c. Grantee’s regulations for the use of same will prohibit [specify activity such as motorized vehicle use with a stipulation allowing maintenance vehicles.]

7. Assignment of Duties. Upon written notice to Grantee, Grantee shall have the right to assign its responsibilities for maintenance, insurance, and other duties under this agreement to an agency of government or a qualified non-profit entity, as the Grantee may determine in its sole discretion, or to another person, association, or organization reasonable acceptable to Grantor. The person(s) or entity accepting such an assignment shall be deemed to have assumed all of Grantor’s obligations pursuant to this agreement throughout the period that assignment remains in effect.

8. Insurance and Liability.
   a. Grantee agrees to maintain at all times during which the trail access easement area is open for public use a standard policy of general commercial liability insurance with respect to the Trail Easement Area having a coverage limit not less than $ __,000,000, adjusted upon request of the Grantee, not more frequently than every five years, to an amount equivalent to that sum in 100__ Dollars. Grantee shall cause Grantor to be named as an additional insured on said policy of insurance.
   b. Term. The easement shall be perpetual in term, or [specify upon what event it expires].
   c. Amendment, Variance, and Waiver. This agreement may be amended from time-to-time upon the written consent of Grantor and Grantee.
   d. Consent to any amendment, variance or waiver shall be in the discretion of the Grantee, shall be consistent with the Trail Access Conservation Easement Area to above, and shall comply with [list various areas which may be appropriate such as conservation and uses as prescribed above]; any amendment, variance or waiver which does not comply with these statutes shall be void and shall have no force or effect.

9. Taxes and Assessments. Grantor shall remain fully liable for the payment of all taxes and assessments thereon and shall, upon request of Grantee, provide to Grantee copies of any current tax bill and receipts for payment thereof. Grantee shall have no obligation whatsoever to pay any taxes, assessments, levies, or other charges of any kind assessed against the subject property to this pedestrian easement of way, any portion thereof, or any owner thereof.

10. Enforcement. The parties may enforce this agreement in law or equity, including, without limitation, Grantor’s authority pursuant to [specify statutory authority], against any or all persons responsible for any violation thereof. Failure to enforce any provision herein contained shall in no event be deemed a waiver of a right to do so hereafter as to the same violation or breach or as to any violation occurring prior to or subsequent thereto.

11. Severability. Invalidation of any provision of this Easement of Way by court order, judgment, statute, or otherwise shall not affect the validity of any other provisions of this agreement, which shall remain in full force and effect.

12. Easement Runs with the Land. Binding Effect on Successors and Assignees. The provisions of this easement shall run with the servant tenement in perpetuity and shall be enforceable by any and all persons and all subsequent owners, successors and assigns of the servient tenement or any portion thereof. As used in this agreement, the term, “owner,” includes the owner of any legal or equitable beneficial interest in the subject property or any portion thereof; the term, “Grantee,” includes the original Grantee and the heirs, successors, and assigns of the grantee; the term, “Grantor,” includes the original Grantor and its successors and assigns. Notwithstanding the foregoing, no party shall be liable for a breach of this agreement resulting from acts or conditions occurring prior to or after the period of his or her ownership.

13. Governing Law. This Trail Access Conservation Easement shall be governed by and construed in accordance with the laws of the State of New York.

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Mary Mangone, Acting Executive Director
Greencube Conservancy
for the Hudson River Valley.

Robin Dropkin, Executive Director
Parks & Trails New York

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[Names of contributing members or organizations if relevant]