

<b>Topic:</b>	Open Space Preservation; Land Acquisition; Natural Resource Protection & Conservation; Wildlife & Fish Habitat
<b>Resource Type:</b>	Regulations
<b>State:</b>	New York
<b>Jurisdiction Type:</b>	Municipal
<b>Municipality:</b>	Town of Eden
<b>Year (adopted, written, etc.):</b>	2001
<b>Community Type - applicable to:</b>	Suburban; Rural
<b>Title:</b>	Town of Eden Conservation Easements Ordinance
<b>Document Last Updated in Database:</b>	May 4, 2017

### ***Abstract***

Chapter 95 of the Town Code for the Town of Eden provides for the acquisition of interests or rights in real property to be used for the preservation of open space and areas which shall constitute a public purpose for which public funds may be expended or advanced after due notice and a public hearing by which the Town of Eden may acquire by purchase, gift, grant, bequest, devise, lease or otherwise the fee of any lesser interest, development right, easement, covenant or other contractual right necessary to acquire open space or open area.

### ***Resource***

Town of Eden NY Conservation Easements  
Code of the Town of Eden NY  
Chapter 95: Conservation Easements  
General Code

[HISTORY: Adopted by the Town Board of the Town of Eden 6-27-2001 by L.L. No. 5-2001. Amendments noted where applicable.]

#### **§ 95-1. Title.**

This chapter shall hereinafter be known and cited as the "Conservation Easement Law of the Town of Eden, New York."

#### **§ 95-2. Purpose.**

It is the purpose of this chapter to provide for the acquisition of interests or rights in real property for the preservation of open space and areas which shall constitute a public purpose for which public funds may be expended or advanced after due notice and a public

hearing, by which the Town of Eden may acquire by purchase, gift, grant, bequest, devise, lease or otherwise the fee of any lesser interest, development right, easement, covenant or other contractual right necessary to acquire open space or open area as the same is defined in § 95-5 herein.

### **§ 95-3. Legislative authority.**

In accordance with § 247 of the General Municipal Law of the State of New York, the Town Board of the Town of Eden has the authority to acquire such interests or rights in land. Pursuant to the above authority, the Town Board has prepared and adopted this chapter, setting forth standards to be followed in the acquisition of such interest.

### **§ 95-4. Applicability.**

This chapter shall apply to the entire area of the Town of Eden.

### **§ 95-5. Definitions.**

For the purpose of this chapter, the terms used herein are defined as follows:

CONSERVATION ADVISORY BOARD — The Conservation Advisory Board of the Town of Eden.

OPEN SPACE or OPEN AREA — Any space or area characterized by natural scenic beauty or whose existing openness natural condition or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development or would maintain or enhance the conservation of natural, aesthetic or scenic resources. For the purposes of this section, natural resources shall include but not be limited to agricultural lands defined as open lands actually used in bona fide agricultural production.

CONSERVATION EASEMENT — An easement, covenant, restriction or other interest in real property, which limits or restricts development, management or use of such real property for the purpose of preserving or maintaining the scenic, open, historic, architectural or the natural or physical condition of the real property. The landowner shall not be required to grant public access to the land (but shall not deny access to authorized public officials for the purpose of verifying compliance with the requirements of this chapter). The landowner shall retain all other rights in and to the property except as expressly limited or restricted by the easement granted as provided herein.

### **§ 95-6. Procedure for granting easement.**

A. Proposal by owner. Any owner or owners of land may submit a proposal to the Town Board of the Town of Eden for the granting of interests or rights in real property for the

preservation of open spaces or open areas. Such proposal shall be submitted in such a manner and form as may be prescribed by the Town Board and shall include a survey map and metes and bounds description of the proposed area. The owner shall pay to the Town a fee, which shall be deemed a reasonable sum to cover the costs of administration, no part of which shall be returnable to the applicant.

- B. Review by Conservation Board. Upon receipt of such proposal, the Town Board shall convey the proposal to the Conservation Advisory Board. The Conservation Advisory Board shall investigate the area to determine if the proposal would be of benefit to the people of the Town of Eden and may negotiate the terms and conditions of the offer. If the Conservation Board determines that it is in the public interest to accept such proposal, it shall send copies of the proposal to the Building Inspector, the Planning Board Chairman, the Town Engineer, the Highway Superintendent, the Assessor, the Town Attorney and the Historical Review Board (if the property has historical value) for their review, and recommend to the Town Board that it hold a public hearing for the purpose of determining whether or not the Town should accept such proposal. If the Conservation Board determines that it is not in the public interest to accept the conservation easement, it shall notify the Town Board and recommend that the Town Board take no further action on the application.
- C. Public hearing by the Town Board After receiving any such recommendations, and after due investigation, if the Town Board determines that it is in the public interest to accept such a proposal, then the Town Board shall conduct a public hearing within 45 days of the receipt of such advisory opinion on the issue of whether or not the Town should accept such proposal. At least 10 days' notice of the time and place of such hearing shall be published in a paper of general circulation in such Town, and a written notice of such proposal shall be given to all adjacent property owners and to any municipality whose boundaries are within 500 feet of the boundaries of said proposed area, and to the school district in which it is located.
- D. Determinations. The Town Board, after such public hearing, may accept the proposal or accept it with any modification thereof it deems appropriate or may reject it in its entirety.
- E. Recording agreement. If such proposal is adopted by the Town Board, it shall be executed by the owner or owners in written form and in a form suitable for recording in the Eric County Clerk's office.
- F. Cancellation. The owner or owners thereof may petition the Town Board for cancellation of said agreement upon good cause shown; such cancellation may be granted only upon payment of the penalties provided in § 95-8 herein.

**§ 95-7. Verification of compliance.**

The Conservation Advisory Board (CAB) is hereby authorized to investigate reports of violations of the terms and conditions of all conservation easements in the Town of Eden. The CAB shall report to the Town Board and the Board of Assessors any findings it makes as a result of its investigations within 30 days after completing its investigation. The CAB shall also annually conduct a review of the existing inventory of conservation easements in the Town of Eden and verify that each parcel is in compliance with the provisions of its applicable agreement. The CAB shall file its annual report with the Town Board and the Board of Assessors at least 10 days prior to the annual taxable status date.

**§ 95-8. Penalty for violation or cancellation; disposition of funds.**

If there is a violation of the terms and conditions of the conservation easement agreement or if said agreement is canceled by the Town Board upon petition of the owner, the then owner or owners of said property must pay to the Town of Eden all taxes, charges and assessments abated under and pursuant to the conservation easement agreement; including, but not limited to, the state, county, Town, school districts and all special improvement districts and other taxing units to which the property is subject. Said back taxes shall be limited as follows: Any easement cancelled before its 11th year will be subject to a five-year maximum payment of back taxes, i.e., rollback; an easement cancelled between its 11th and 15th year will be subject to a four-year maximum rollback; an easement cancelled in its 16th year or later will be subject to a three-year maximum rollback. In addition, a penalty will be assessed on the basis of the previous year's tax abatement, multiplied by a factor equal to the term of the easement divided by the current year of the easement. This factor shall not exceed five. All funds accruing to and received by the Town of Eden as cancellation penalties shall be deposited in a trust account dedicated to the preservation of open space.

**§ 95-9. Valuation for taxation.**

After acquisition of any easement pursuant to this chapter, the Assessor is legally required to take into account and be limited by the limitation on the future use of the land resulting from the easement.