

Conservation Options for Farmland Owners

- What Conservation Options are Available to the Agricultural Community?
 - Conservation Easements
 - Purchase of Development Rights
 - Transfer of Development Rights
 - Conservation Subdivision
 - Bargain Sale
 - Like Kind Exchange
 - Installment Sale
- What Tools will help me to Transfer to the Next Generation
 - Family Limited Partnership
 - Blending of some Conservation Tools

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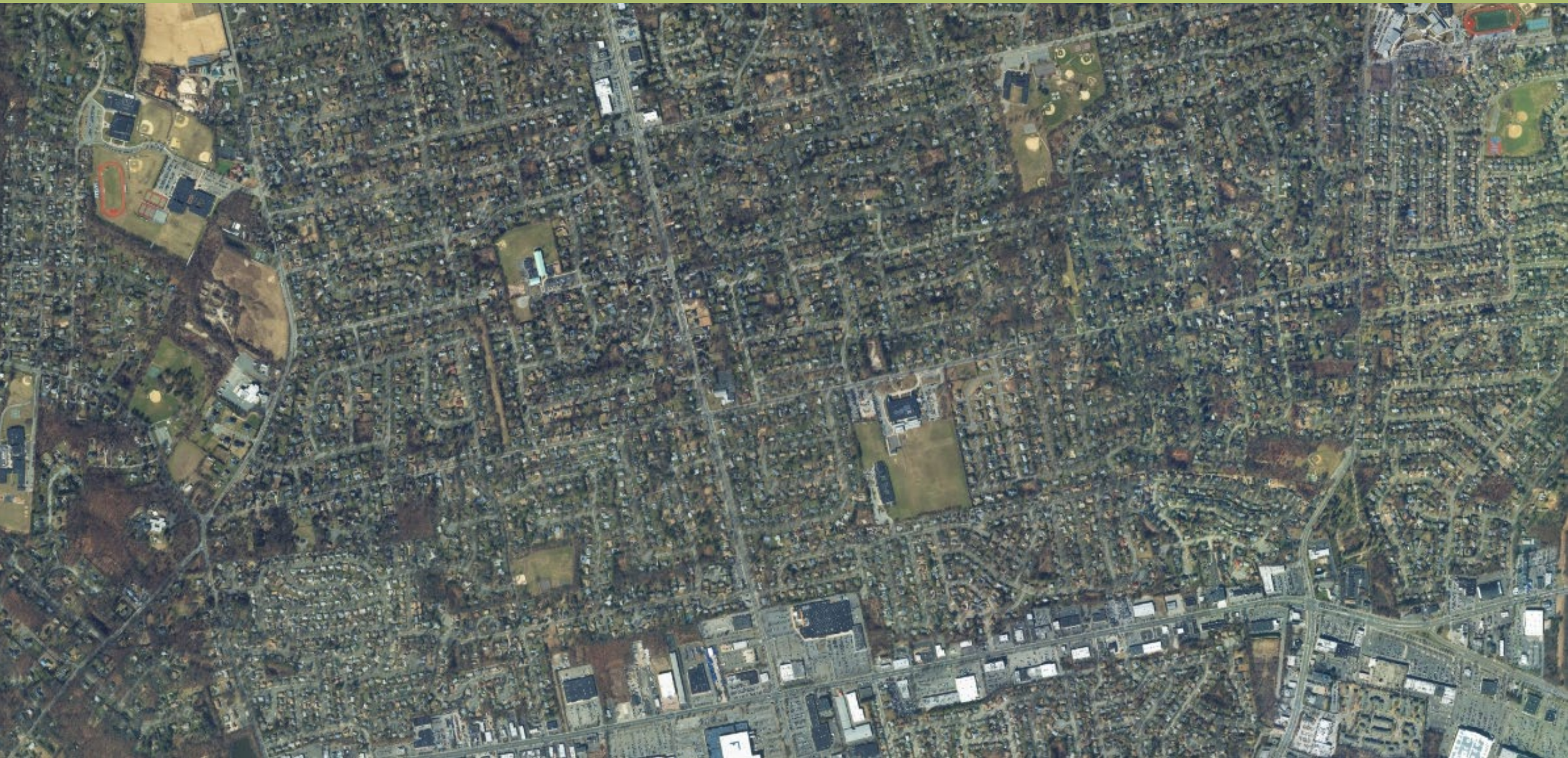
The Importance of Conservation – 1947 → 1962 → 2016



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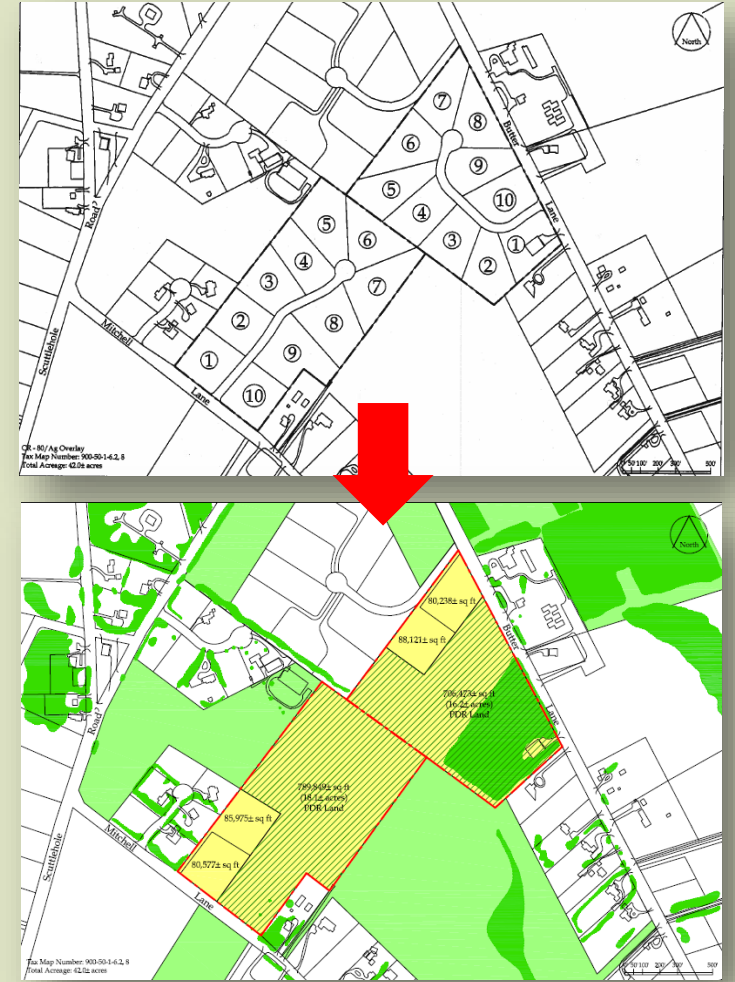
Conservation Easements

How Does it Work?

- Voluntary legal agreement between a landowner and qualified conservation organization
- Restricts uses of the land in order to protect its conservation values.
- You continue to own your land and retain the right to sell it or pass it on to your heirs.

Types of easements:

- Agricultural
- Open Space
- Natural Habitat
- Historic Preservation/ Façade
- Used in combination w/ Limited Development



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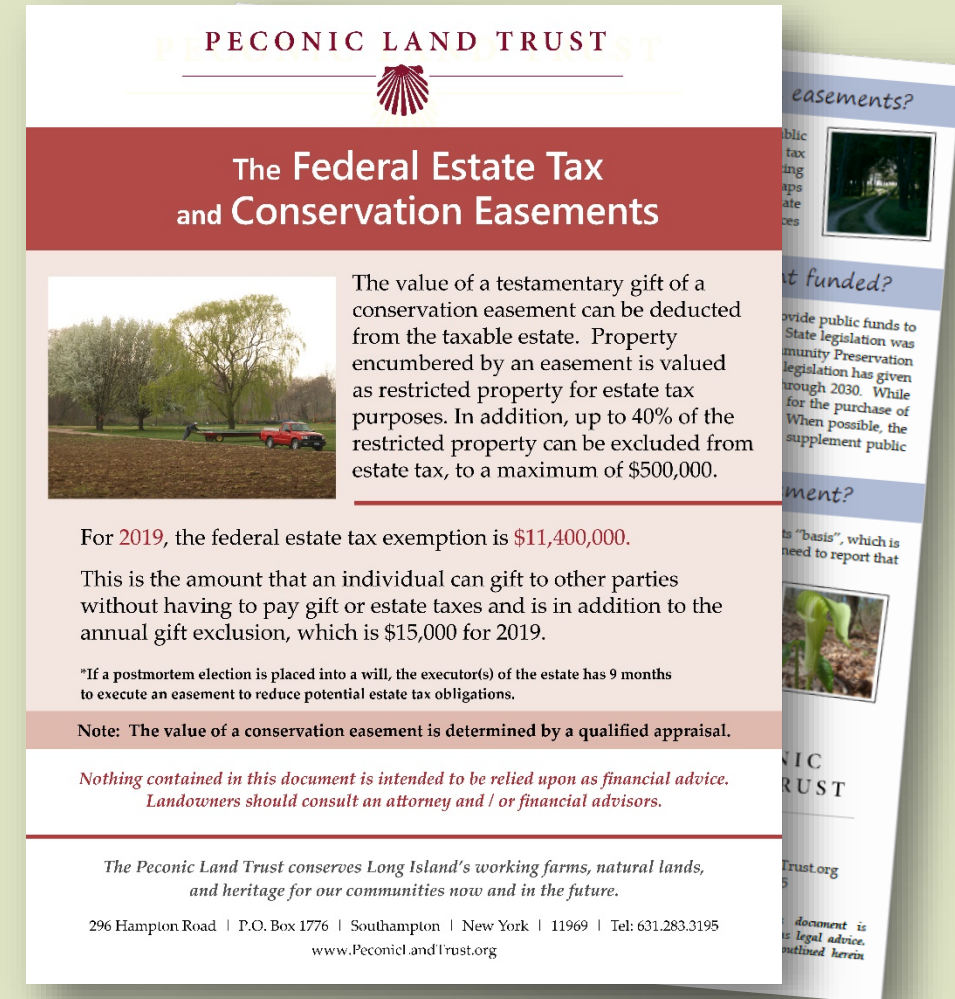
Conservation Easement – Tax Incentives

Tax Incentives?

A donation of a conservation easement may result in a charitable, tax-deductible gift* for income tax.

* IRC code 170(h) recognizes a conservation easement as a qualified conservation contribution **IF it meets these criteria:**

- It is a real property interest;
 - To a qualified organization or Town;
 - Exclusively for conservation purposes that will yield a significant public benefit
-
- A potential reduction in your property taxes
 - A reduction in the value of your taxable estate based on a qualified appraisal.



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The Federal Estate Tax and Conservation Easements

The value of a testamentary gift of a conservation easement can be deducted from the taxable estate. Property encumbered by an easement is valued as restricted property for estate tax purposes. In addition, up to 40% of the restricted property can be excluded from estate tax, to a maximum of \$500,000.

For 2019, the federal estate tax exemption is **\$11,400,000**.

This is the amount that an individual can gift to other parties without having to pay gift or estate taxes and is in addition to the annual gift exclusion, which is \$15,000 for 2019.

**If a postmortem election is placed into a will, the executor(s) of the estate has 9 months to execute an easement to reduce potential estate tax obligations.*

Note: The value of a conservation easement is determined by a qualified appraisal.

Nothing contained in this document is intended to be relied upon as financial advice. Landowners should consult an attorney and / or financial advisors.

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www.PeconicLandTrust.org



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Purchase of Development Rights

How Does it Work?

- Suffolk County and many towns can Purchase Development Rights (PDR) to protect prime agricultural soils from residential development.
- You continue to own your farmland and retain the right to sell it or pass it on to your heirs.
- PDR land can be more affordable for another farmer to purchase or for transitioning to next generation farmer.

Tax Incentives?

- While the value of your farmland may be reduced for estate tax purposes, the revenue from the sale of development rights will be reported as income and may impact your tax liability.
- Lower land value means you can transfer more land to next generation
- The revenue would provide equity to prepare for estate tax

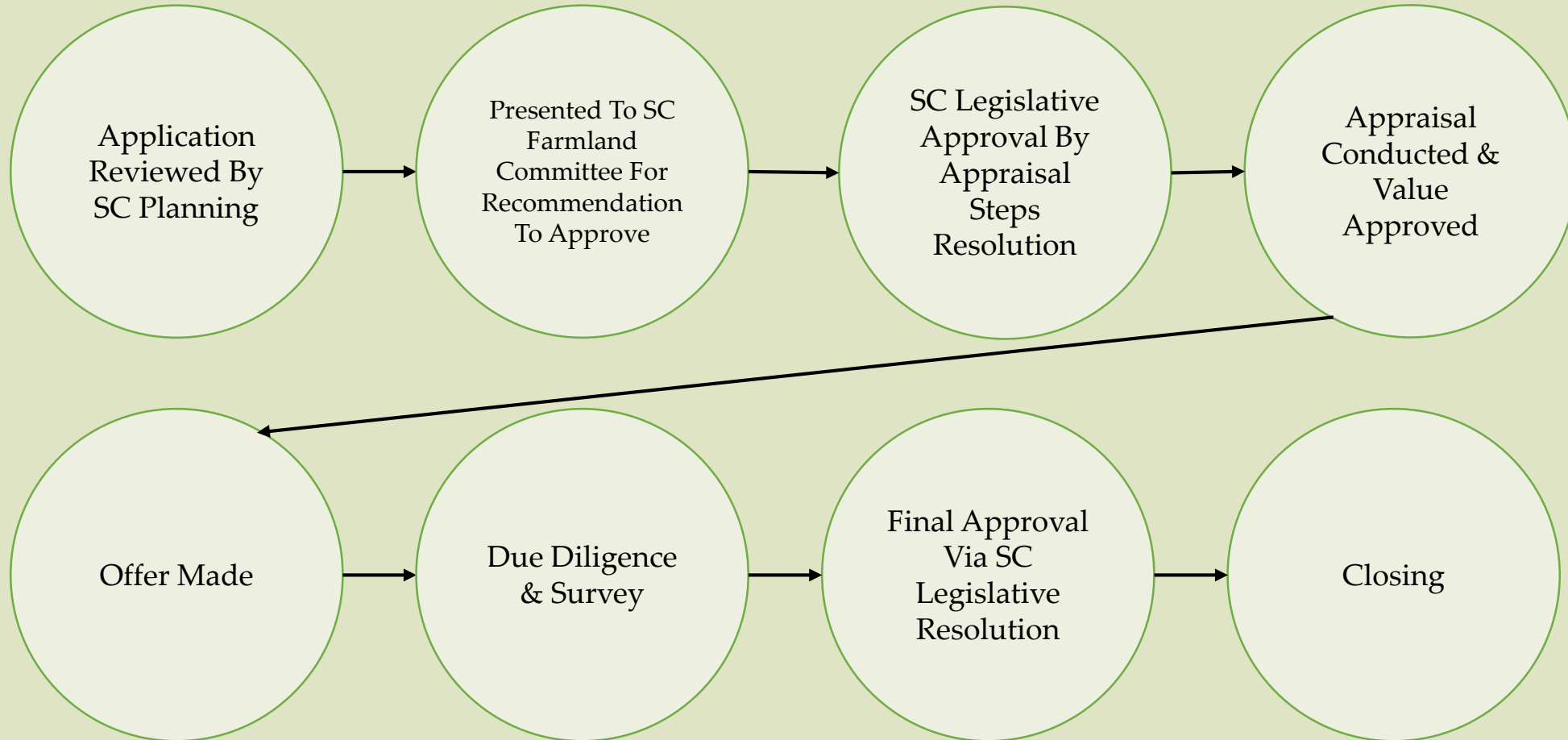


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Purchase of Development Rights – Process

How Does Suffolk County Farmland Preservation Program Work?



This is a simplified flowchart for presentation purposes only. For more information, call Laretta Fischer (SC Chief Environmental Analyst at (631) 853-6044 or Andrew Amakawa (SC Senior Planner) at (631) 853-4863

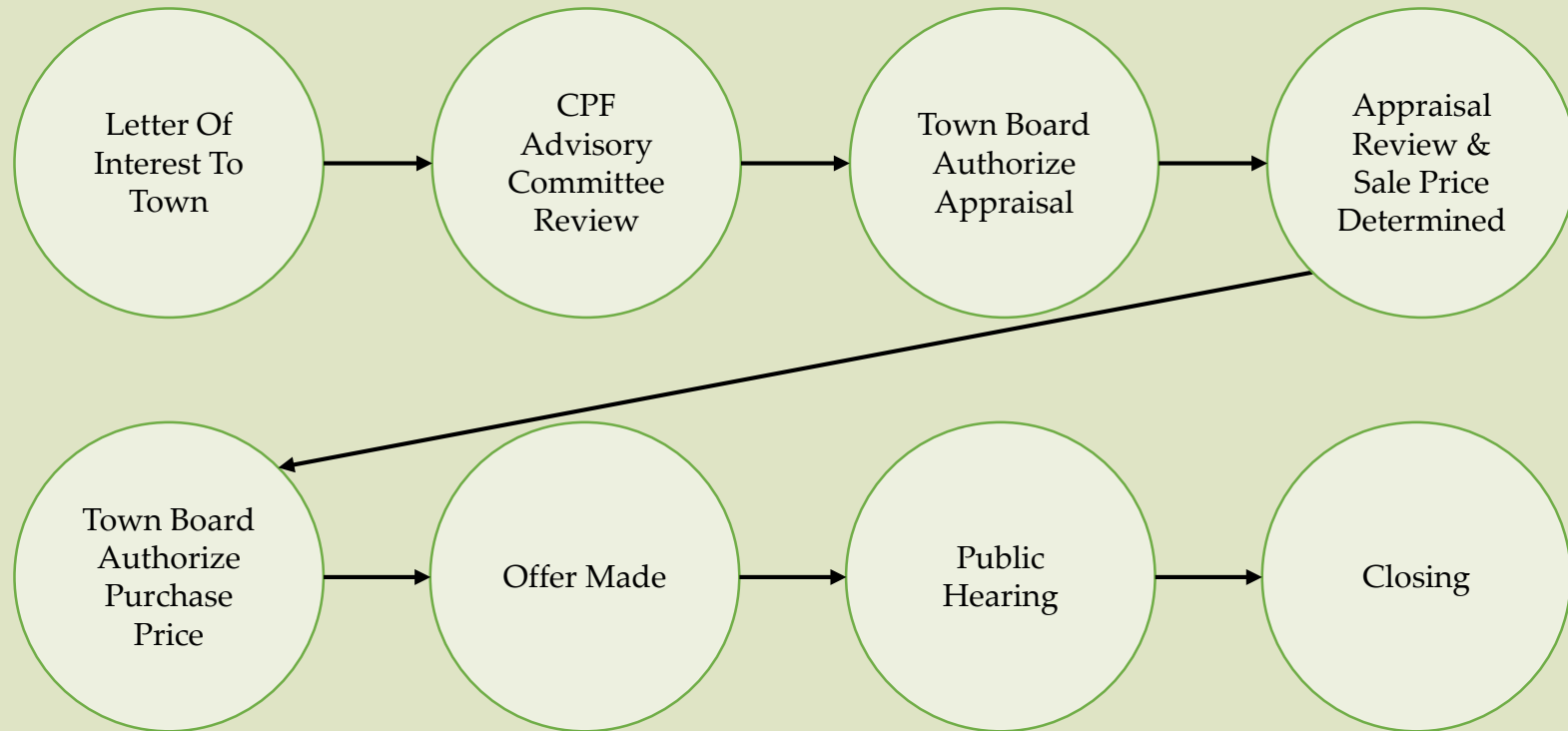


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Community Preservation Fund (CPF) 2% Transfer Tax

Generally - How Does it Work with the Towns?



**Who gets the 2% tax?
Your Town Government!**

What you need to know about the Peconic Bay Region Community Preservation Fund

CONGRATULATIONS ON YOUR NEW HOME!

The 2% Real Estate Transfer Tax

is collected by **Suffolk County**
it is a **TAX**
not a charitable contribution

Suffolk County distributes the \$ to the 5 East End Towns
TO LEARN MORE ABOUT THE CPF IN YOUR TOWN, PLEASE CONTACT:

RIVERHEAD 631.727.9200	SOUTHOLD 631.765.5711	SOUTHAMPTON 631.287.5720	EAST HAMPTON 631.324.7420	SHELTER ISLAND 631.749.1080
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THE TRANSFER TAX \$\$ go to YOUR TOWN,
to preserve the community character unique to the East End!

The Peconic Land Trust, does not collect or distribute the CPF funds.

Agricultural Best Management Practices can be considered for funding using 20% of CPF Funds that are allocated to water quality projects.



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Purchase of Development Rights – Example

- In 2008, Suffolk County and Town of Riverhead purchased development rights on 22 acres of farmland located off of Middle Country Road.
- The property was actively farmed.
- They retained a development area at the south end of the farm.
- 70/30% shared purchase between municipalities.
- Peconic Land Trust worked with the landowner and municipal partners to assist in this conservation effort.



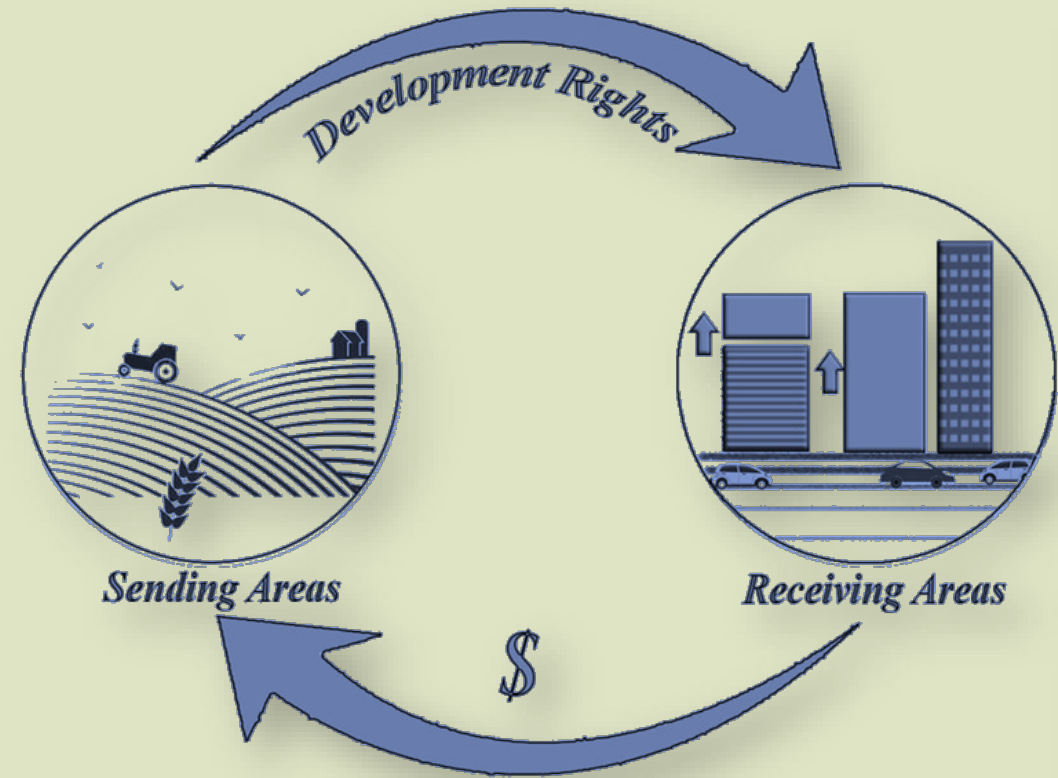
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Transfer of Development Rights

How Does it Work?

- The transfer of density from one parcel in a sending district to another in a receiving district.
- You continue to own your land and retain the right to sell it or pass it on your heirs.
- The value of the development rights being transferred is negotiated between the landowner and the purchaser and is not limited by an appraisal.
- The sale price received by the landowner is subject to capital gains taxes and there is no opportunity for a bargain sale.

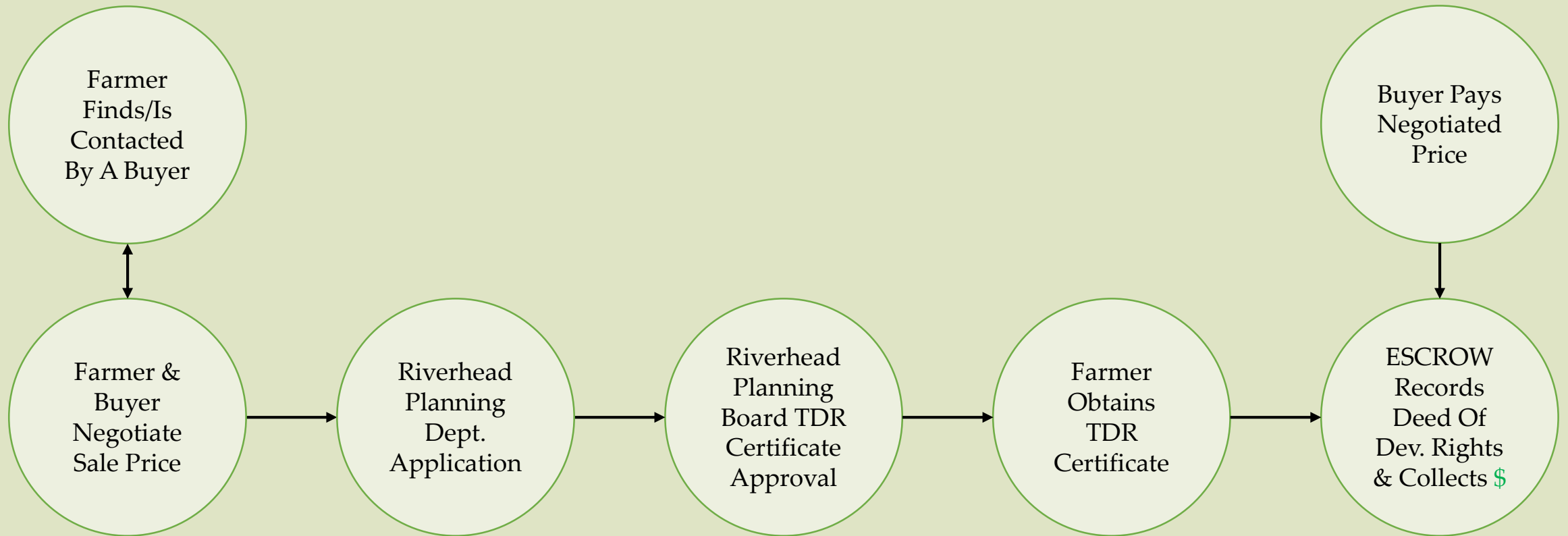


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Riverhead Transfer of Development Rights (TDR)– Process

How Does Riverhead Town TDR process Work?



For assistance, call Jefferson Murphree at Riverhead Planning Dept. at (631) 727-3200 x239



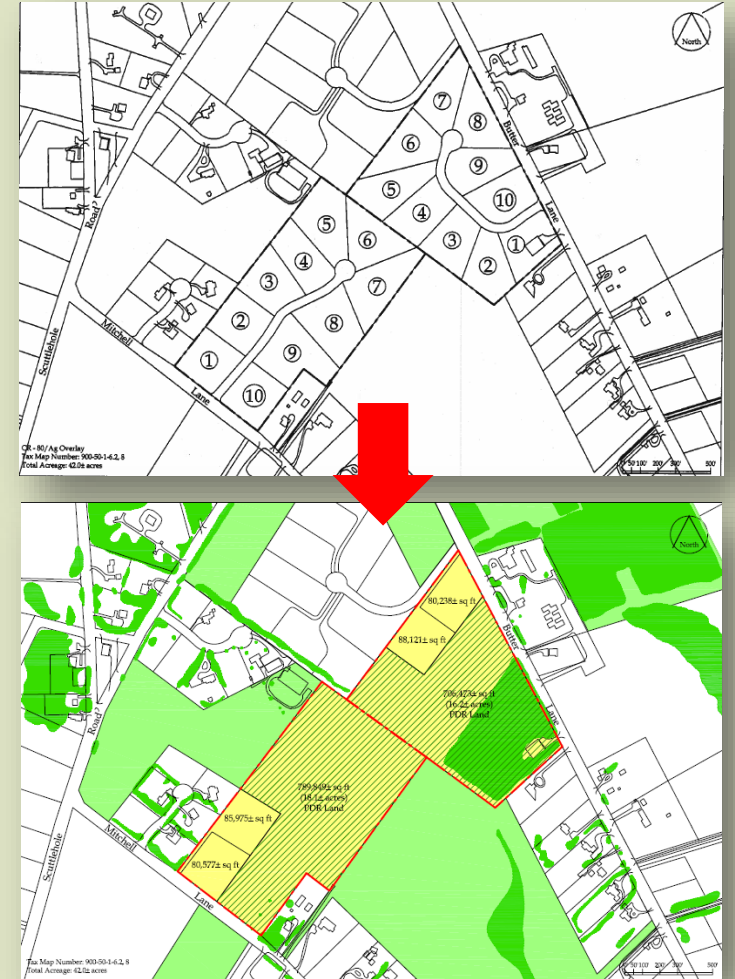
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Conservation Subdivision

How Does it Work?

- An approach to subdividing land on a reduced-density basis, while protecting a significant amount of farmland through the sale or donation of development rights.
- The low density, high conservation plan may expedite the municipality's approval process.
- Infrastructure costs of implementing the subdivision can be reduced.
- An alternative to full development that is responsive to the local real estate market.
- You can realize more equity instead of selling to developer.



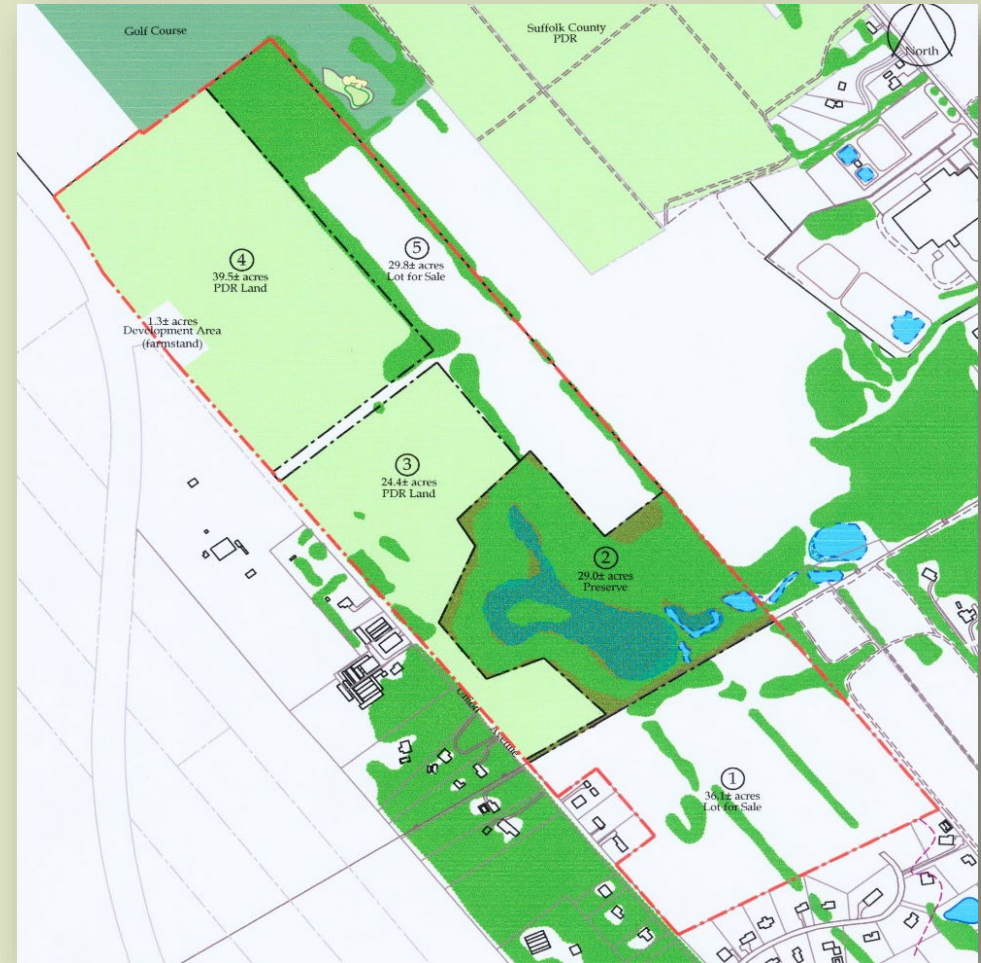
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Conservation Subdivision - Example

Instead of selling their entire farm to a developer, this owner embarked upon a Conservation Subdivision to retain control and realize more equity:

- Full yield = 39 lots But reduce Density to 3 large lots with 47 acres of protected farmland and woodland
- Sold Development Rights to preserve a good portion of the farmland and then sell the protected farmland. They offset their capital gains tax by the donation of the woodland parcel on the south end of the property to the Trust.
- A qualified appraisal determined the value of the charitable gift of land and their financial advisors worked closely with them to structure the timing of these transactions.



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Bargain Sale

How does it Work?

- \$1,000,000 Fair Market Value
- \$800,000 Bargain Sale Negotiated Price
- \$200,000 Potential Charitable Gift *(Appraisal required)

Tax Incentives?

- Bargain Sale must declare his/her intent prior to transaction.
- The difference between the land's fair market value and its bargain sale price may qualify as a charitable gift to offset potential capital gains tax.
- Bargain sale of development rights is deducted up to 30% of AGI and carried over up to 15 years (and remember your AGI has been increased by the sale). *IRS 2018 Ruling may disallow this... please check with Financial Advisors first.*
- Bargain sale of land is deducted up to 30% of AGI and carried over up to 5 years.



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Installment Sale

- An option for someone selling property, for a gain, where at least one payment is scheduled to be received after the tax year in which the **sale** occurs.
- \$1,000,000 Contract of Sale with 3-year terms:
 - 2017 payment \$350,000
 - 2018 payment \$350,000
 - 2019 payment \$300,000
- Capital Gains Tax spread out over time.



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Like-Kind Exchange

How Does it Work?

- A Like-Kind Exchange can be structured to postpone paying tax on the gain of your sale of real property, if you reinvest the proceeds (exchange it) for other qualified, like-kind real property.
- The proceeds of the sale must be invested in qualified business or investment property.
- The exchange property must be identified within 45 days after the sale of the initial property.
- The closing must take place within 180 days after the initial sale.

Tax Incentives?

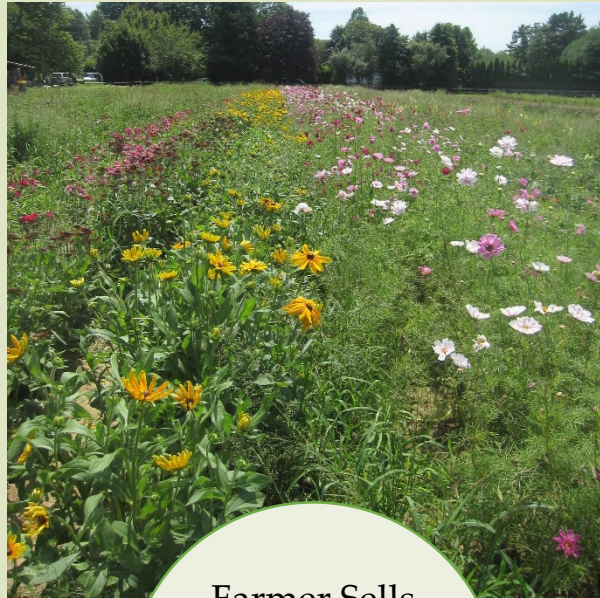
- Capital Gains Tax on sale of land is deferred until you sell the second property you reinvested in.



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Like-Kind Exchange - Example



Farmer Sells
Development
Rights on 6
Acres of
farmland.



Proceeds
Used to Buy
14 Acres of
Farmland.

Form 8824 Like-Kind Exchanges
(and section 1043 conflict-of-interest sales)
OMB No. 1545-1180
2018
Attachment Sequence No. 109

Department of the Treasury Internal Revenue Service
Go to www.irs.gov/Form8824 for instructions and the latest information.
Attach to your tax return.

Name(s) shown on tax return Identifying number

Part I Information on the Like-Kind Exchange

Note: Generally, only real property should be described on line 1 or 2. However, you may describe personal and/or real property on line 1 or 2 if you are filing this form to report the disposition of property exchanged in a previously reported related party like-kind exchange. If the property described on line 1 or line 2 is real or personal property located outside the United States, indicate the country.

1 Description of like-kind property given up: _____

2 Description of like-kind property received: _____

3 Date like-kind property given up was originally acquired (month, day, year) 3 MM/DD/YYYY

4 Date you actually transferred your property to the other party (month, day, year) 4 MM/DD/YYYY

5 Date like-kind property you received was identified by written notice to another party (month, day, year). See instructions for 45-day written identification requirement 5 MM/DD/YYYY

6 Date you actually received the like-kind property from other party (month, day, year). See instructions 6 MM/DD/YYYY

7 Was the exchange of the property given up or received made with a related party, either directly or indirectly (such as through an intermediary)? See instructions. If "Yes," complete Part II. If "No," go to Part III Yes No

Note: Do not file this form if a related party sold property into the exchange, directly or indirectly (such as through an intermediary); that property became your replacement property; and none of the exceptions in line 11 applies to the exchange. Instead, report the disposition of the property as if the exchange had been a sale. If one of the exceptions on line 11 applies to the exchange, complete Part II.

Part II Related Party Exchange Information

8 Name of related party Relationship to you Related party's identifying number

Address (no, street, and apt., room, or suite no., city or town, state, and ZIP code)

9 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did the related party sell or dispose of any part of the like-kind property received from you (or an intermediary) in the exchange? Yes No

10 During this tax year (and before the date that is 2 years after the last transfer of property that was part of the exchange), did you sell or dispose of any part of the like-kind property received from you (or an intermediary) in the exchange? Yes No

If both lines 9 and 10 are "No" and this is not a sale, you do not need to file this form. If either line 9 or 10 is "Yes," you must file this form with your tax return for the year of the exchange. Stop.

Capital Gain
Taxes
Deferred



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What Tools Will Help Me Transfer Land to the Next Generation?

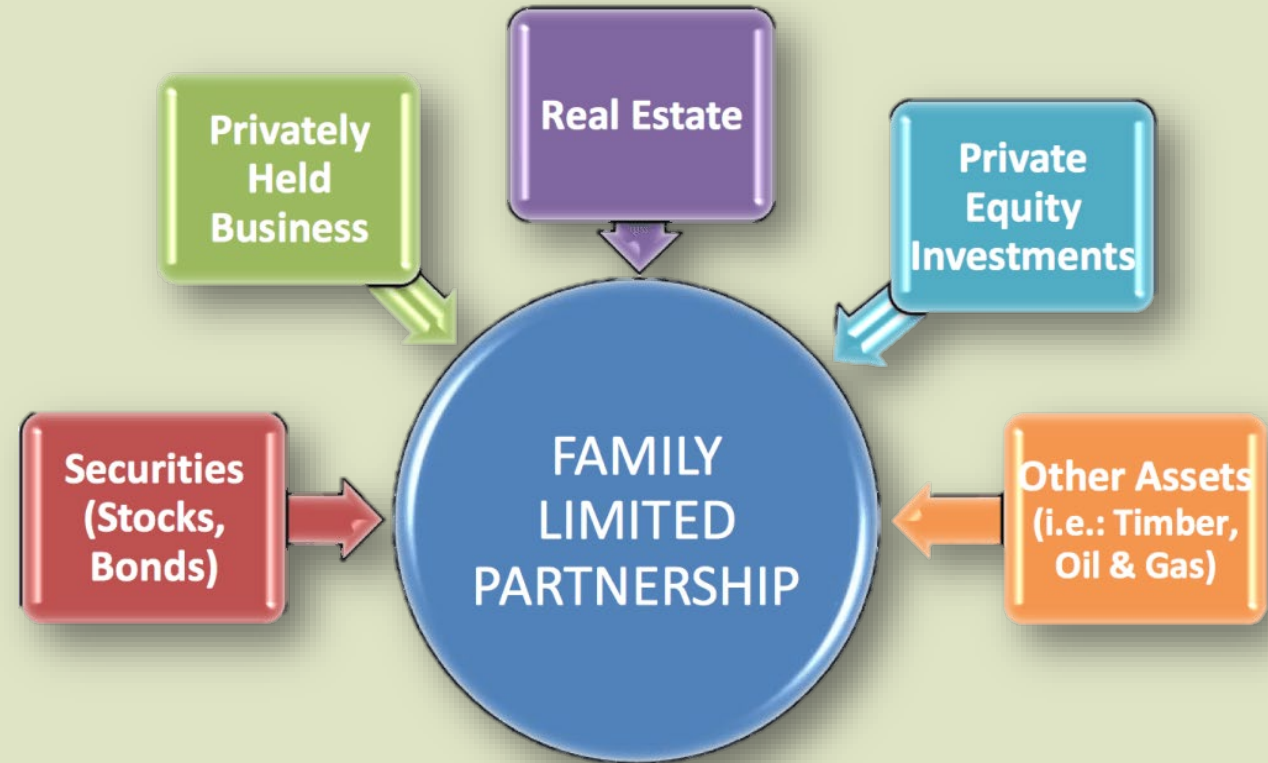


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Family Limited Partnership - Overview & Tax Incentives

- A legal agreement where family members own shares/ interests of a property.
- Shares can be transferred from the primary owner to the limited partners over time to facilitate the transfer of ownership of the land from one generation to the next.
- General partners control all management and investment decisions and are responsible for 100% of the liability.
- Limited partners cannot participate in the management of the FLP and have limited liability.
- The FLP itself is not taxable, instead the owners of the FLP report the partnership's income and deductions on their personal tax return, in proportion to their interests.



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What Tools Will Help Me Transfer Land to the Next Generation?

A combination of several of these Conservation Tools could be considered....

- Sell **Development Rights** on 1 farm parcel, structure it as a **Like Kind Exchange** to purchase another farm parcel. You then set up a **Family Limited Partnership** to initiate your long term transition to the next Generation.
- **Conservation Subdivision Plan** to preserve as much farmland as possible and create valuable residential lots. The sale of these lots can provide the income you may need for estate taxes while most of the farmland can remain in production by your heirs.
- In Riverhead, you could obtain a **TDR Certificate** to give to one beneficiary and provide for your farming beneficiary to inherit the protected farmland.
- Successful Team: Experienced Financial & Legal Advisors, Farm Net, Land Planner



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Thank you!

Given the complexities involved in estate planning, conservation transactions, and land development, landowners are urged to consult an attorney and/or financial advisor.

We Welcome Your Questions & Feedback!
Call us at (631)283-3195



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